

# EXHIBIT

3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

MDL No. 2804  
THIS DOCUMENT RELATES TO: Case No. 17-md-2804

Track Eight: Cobb County, Georgia  
Case No. 1:18-op-45817

COBB COUNTY,

Plaintiff,

vs.

PURDUE PHARMA, L.P., et al.,

Defendants.

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IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

MDL No. 2804  
THIS DOCUMENT RELATES TO: Case No. 17-md-2804

Track Nine: Tarrant County, Texas  
Case No. 1:18-op-45274

VIDEOTAPED DEPOSITION OF  
CARMEN A. CATIZONE, MS, RPh, DPh  
Chicago, Illinois  
Thursday, May 23rd, 2024

REPORTED BY: GREG S. WEILAND, CSR, RMR, CRR  
JOB NO.: 6693104

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 May 23rd, 2024</p> <p>5 8:35 a.m. Central Daylight Time</p> <p>6</p> <p>7 Videotaped Deposition of CARMEN A.</p> <p>8 CATIZONE, MS, RPh, DPh, conducted via Zoom, taken</p> <p>9 before GREG S. WEILAND, CSR, RMR, CRR, pursuant to</p> <p>10 the Federal Rules of Civil Procedure for the United</p> <p>11 States District Court pertaining to the taking of</p> <p>12 depositions, at Suite 3100, 77 West Wacker Drive, in</p> <p>13 the City of Chicago, Cook County, Illinois,</p> <p>14 commencing at 8:35 a.m. Central Daylight Time, on</p> <p>15 the 23rd day of May, 2024.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PRESENT (CONTINUED):</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS [continued]:</p> <p>4 SIMMONS HANLY CONROY LLC</p> <p>5 BY: MR. SANFORD SMOKLER (via Zoom)</p> <p>6 112 Madison Avenue</p> <p>7 New York, New York 10016-7416</p> <p>8 (212) 784-6400</p> <p>9 Email: ssmokler@simmonsfirm.com</p> <p>10 - and -</p> <p>11 BARON &amp; BUDD</p> <p>12 BY: MR. JAY LICHTER (via Zoom)</p> <p>13 15910 Ventura Boulevard, Suite 1600</p> <p>14 Encino, California 91436</p> <p>15 (818) 839-2333</p> <p>16 Email: jlichter@baronbudd.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 PRESENT:</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS:</p> <p>4 MOTLEY RICE LLC</p> <p>5 BY: MR. MICHAEL E. ELSNER</p> <p>6 MS. EBONY WILLIAMS BOBBITT (via Zoom)</p> <p>7 MS. AMANDA UNTERREINER (via Zoom)</p> <p>8 28 Bridgeside Boulevard</p> <p>9 Mount Pleasant, South Carolina 29464</p> <p>10 (843) 216-9000</p> <p>11 Email: melsner@motleyrice.com</p> <p>12 ebobbitt@motleyrice.com</p> <p>13 aunterreiner@motleyrice.com</p> <p>14 - and -</p> <p>15 THE LANIER LAW FIRM</p> <p>16 BY: MR. EVAN M. JANUSH (via Zoom)</p> <p>17 MS. LEILA AYACHI (via Zoom)</p> <p>18 MS. SADIE TURNER (via Zoom)</p> <p>19 10940 West Sam Houston Parkway North,</p> <p>20 Suite 100</p> <p>21 Houston, Texas 77064</p> <p>22 (713) 659-5200</p> <p>23 Email: evan.janush@LanierLawFirm.com</p> <p>24 leila.ayachi@LanierLawFirm.com</p> <p>25 sadie.turner@LanierLawFirm.com</p>	<p style="text-align: right;">Page 5</p> <p>1 PRESENT (CONTINUED):</p> <p>2</p> <p>3 ON BEHALF OF DEFENDANT PUBLIX SUPER MARKETS, INC.:</p> <p>4 BARNES &amp; THORNBURG LLP</p> <p>5 BY: MS. MEREDITH THORNBURG WHITE</p> <p>6 MS. KARA KAPKE (via Zoom)</p> <p>7 MR. J.T. LARSON (via Zoom)</p> <p>8 11 South Meridian Street</p> <p>9 Indianapolis, Indiana 46204</p> <p>10 (317) 236-1313</p> <p>11 Email: mwhite@btlaw.com</p> <p>12 kara.kapke@btlaw.com</p> <p>13 jtlarson@btlaw.com</p> <p>14 - and -</p> <p>15 BARNES &amp; THORNBURG LLP</p> <p>16 BY: MR. MITCHELL CHARCHALIS</p> <p>17 390 Madison Avenue, 12th Floor</p> <p>18 New York, New York 10017</p> <p>19 (310) 284-3768</p> <p>20 Email: mcharchalis@btlaw.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<div>Page 6</div>			<div>Page 8</div>		
<div>1 PRESENT (CONTINUED):</div> <div>2</div> <div>3 ON BEHALF OF DEFENDANT PUBLIX SUPER MARKETS, INC.</div> <div>4 [continued]:</div> <div>5 BARNES &amp; THORNBURG LLP</div> <div>6 BY: MS. REBECCA L. TRELA (via Zoom)</div> <div>7 1717 Arch Street, Suite 4900</div> <div>8 Philadelphia, Pennsylvania 19103</div> <div>9 (445) 201-8911</div> <div>10 Email: Rebecca.Trela@btlaw.com</div> <div>11</div> <div>12 ON BEHALF OF DEFENDANTS ALBERTSONS, INC.,</div> <div>13 ALBERTSONS, LLC, SAFEWAY, INC., RANDALL'S FOOD &amp;</div> <div>14 DRUG, LP, AND UNITED SUPERMARKETS, LLC:</div> <div>15 GREENBERG TRAURIG LLP</div> <div>16 BY: MS. GRETCHEN N. MILLER</div> <div>17 77 West Wacker Drive, Suite 3100</div> <div>18 Chicago, Illinois 60601</div> <div>19 (312) 456-6583</div> <div>20 Email: millerg@gtlaw.com</div> <div>21</div> <div>22 ALSO PRESENT:</div> <div>23 MR. NICK PAGE, The Videographer</div> <div>24 MR. BILL HAMMOND (via Zoom)</div> <div>25</div>			<div>1 DEPOSITION EXHIBITS (CONTINUED)</div> <div>2 NUMBER DESCRIPTION PAGE</div> <div>3 Exhibit 5 Document titled Prescription 57</div> <div>4 Drug Trafficking Trends,</div> <div>5 Synthetic Drugs and</div> <div>6 Methamphetamine, Bates labeled</div> <div>7 MNKOI 0001304524 and 0001304708</div> <div>8 Exhibit 6 Emails sent in February 2014, 59</div> <div>9 with attachment, Bates labeled</div> <div>10 MNKOI 0006779286 through</div> <div>11 0006779304</div> <div>12 Exhibit 7 Document titled Stakeholders' 74</div> <div>13 Challenges and Red Flag Warning</div> <div>14 Signs Related to Prescribing</div> <div>15 and Dispensing Controlled</div> <div>16 Substances</div> <div>17 Exhibit 8 Document titled Combating 80</div> <div>18 Pharmaceutical Diversion, Bates</div> <div>19 labeled MNKOI 0006779293</div> <div>20 through 0006779301</div> <div>21 Exhibit 9 Texas Administrative Code, 82</div> <div>22 Title 22, Part 15, Chapter 291,</div> <div>23 Subchapter A, Rule §291.29</div> <div>24</div> <div>25</div>		
<div>Page 7</div>			<div>Page 9</div>		
<div>1 INDEX</div> <div>2 May 23rd, 2024</div> <div>3 TESTIMONY OF CARMEN A. CATIZONE, MS, RPh, DPh</div> <div>4 PAGE</div> <div>5 Examination by Ms. Miller .....14</div> <div>6 Examination by Mr. Elsner .....239</div> <div>7 Further Examination by Ms. Miller .....254</div> <div>8 Further Examination by Mr. Elsner .....263</div> <div>9</div> <div>10 DEPOSITION EXHIBITS</div> <div>11 NUMBER DESCRIPTION PAGE</div> <div>12 Exhibit 1 General Expert Report of Carmen 16</div> <div>13 A. Catizone, MS, RPh, DPh</div> <div>14 Exhibit 2 Invoices, February &amp; March 18</div> <div>15 2024; April 2024</div> <div>16 Exhibit 3 Document titled Combating 28</div> <div>17 prescription drug abuse: an</div> <div>18 interview with Mark Trudeau and</div> <div>19 Carmen Catizone</div> <div>20 Exhibit 4 Document titled A Pharmacist's 53</div> <div>21 Guide to Prescription Fraud</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>			<div>1 DEPOSITION EXHIBITS (CONTINUED)</div> <div>2 NUMBER DESCRIPTION PAGE</div> <div>3 Exhibit 10 Document titled Texas State 83</div> <div>4 Board of Pharmacy, "Red Flags"</div> <div>5 Checklist for Pharmacies, You</div> <div>6 Might Be a Pill Mill If...</div> <div>7 Exhibit 11 Expert Report of Craig J. 95</div> <div>8 McCann, Ph.D., CFA [excerpt]</div> <div>9 Exhibit 12 Document titled State 102</div> <div>10 Participation Status</div> <div>11 [5.06.2024. Subject to ongoing</div> <div>12 corrections and updates]</div> <div>13 Exhibit 13 Document titled Exhibit P, CVS 104</div> <div>14 Pharmacy Inc. Injunctive Terms</div> <div>15 Exhibit 14 Exhibit P, Pharmacy Controlled 104</div> <div>16 Substance Compliance Program &amp;</div> <div>17 Anti-Diversion Injunctive Terms</div> <div>18 [Walmart]</div> <div>19 Exhibit 15 Exhibit P, Pharmacy Controlled 105</div> <div>20 Substance Compliance Program &amp;</div> <div>21 Anti-Diversion Injunctive Terms</div> <div>22 [Walgreens]</div> <div>23 Exhibit 16 Injunction Order, In Re: 105</div> <div>24 National Prescription Opiate</div> <div>25 Litigation</div>		

Page 10	Page 12
<p>1 DEPOSITION EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 17 Document titled Use of Opioids 146</p> <p>4 for Chronic, Noncancer Pain</p> <p>5 Quietly Gaining Acceptance,</p> <p>6 Alex Otto</p> <p>7 Exhibit 18 Email sent on July 8, 2013, 168</p> <p>8 with attachment, Bates labeled</p> <p>9 ALB-NM00015258 through 00015260</p> <p>10 Exhibit 19 Email sent on July 21, 2014, 171</p> <p>11 with attachment, Bates labeled</p> <p>12 ALB-NM00029271 through 00029290</p> <p>13 Exhibit 20 Transcript, Videotaped 183</p> <p>14 Deposition of Carmen A.</p> <p>15 Catizone, MS, RPh, DPh, taken</p> <p>16 on Tuesday, January 25, 2022</p> <p>17 [excerpt]</p> <p>18 Exhibit 21 Document titled Report of the 199</p> <p>19 Task Force on Prescription Drug</p> <p>20 Abuse</p> <p>21 Exhibit 22 Document titled Retail Pharmacy 255</p> <p>22 Policies and Procedures, Bates</p> <p>23 labeled ALB-NM00008034 through</p> <p>24 00008035</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: Good morning. We are</p> <p>2 going on the record at 8:35 a.m. on May 23rd,</p> <p>3 2024.</p> <p>4 Please note that the microphones are</p> <p>5 sensitive and may pick up whispering and</p> <p>6 private conversations. Please mute your phones</p> <p>7 at this time.</p> <p>8 Audio and video recording continue to take</p> <p>9 place unless all parties agree to go off the</p> <p>10 record.</p> <p>11 This is Media Unit Number 1 of the</p> <p>12 video-recorded deposition of Carmen Catizone</p> <p>13 taken in the matter of National Prescription</p> <p>14 Opiate Litigation filed in the U.S. District</p> <p>15 Court, Northern District of Ohio, Eastern</p> <p>16 Division, Case Number 17MD2804.</p> <p>17 The location of this deposition is being</p> <p>18 held at the offices of Greenberg Traurig LLP,</p> <p>19 located at 77 West Wacker Drive, Chicago,</p> <p>20 Illinois.</p> <p>21 My name is Nick Page, representing</p> <p>22 Veritext. I'm the videographer.</p> <p>23 The court reporter is Greg Weiland, also</p> <p>24 from the firm Veritext.</p> <p>25 I'm not related to any party in this</p>
Page 11	Page 13
<p>1 DEPOSITION EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 23 Document titled Retail Pharmacy 256</p> <p>4 Policies and Procedures, Bates</p> <p>5 labeled ALB-NM00009720 through</p> <p>6 00009796</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 action, nor am I financially interested in the</p> <p>2 outcome. If there are objections to the</p> <p>3 proceedings, please state them at the time of</p> <p>4 your appearance.</p> <p>5 Counsel and all present, including</p> <p>6 remotely, will now please state their</p> <p>7 appearances and affiliations for the record,</p> <p>8 beginning with the noticing party.</p> <p>9 MS. MILLER: Gretchen Miller from</p> <p>10 Greenberg Traurig on behalf of defendant</p> <p>11 Albertsons.</p> <p>12 MS. WHITE: Meredith Thornburgh White with</p> <p>13 Barnes &amp; Thornburg on behalf of Publix</p> <p>14 Supermarket.</p> <p>15 MR. CHARCHALIS: Mitchell Charchalis,</p> <p>16 Barnes &amp; Thornburg, on behalf of Publix.</p> <p>17 MR. ELSNER: Michael Elsner from the law</p> <p>18 firm of Motley Rice on behalf of the plaintiff</p> <p>19 Tarrant County and the Plaintiff's Executive</p> <p>20 Committee in the MDL.</p> <p>21 MS. WHITE: I'm so sorry, we're not</p> <p>22 getting what Gretchen is getting on our links.</p> <p>23 THE VIDEOGRAPHER: Going off the record at</p> <p>24 8:37.</p> <p>25</p>

<p style="text-align: right;">Page 14</p> <p>1 (Whereupon, a recess was taken 2 from 8:37 a.m. to 8:38 a.m.) 3 THE VIDEOGRAPHER: Back on the record at 4 8:38. 5 (Witness sworn.) 6 CARMEN A. CATIZONE 7 after being first duly sworn, testified as follows: 8 EXAMINATION 9 EXAMINATION 10 BY MS. MILLER: 11 Q. Good morning, Mr. Catizone. 12 A. Good morning. 13 Q. As mentioned by the videographer, we're 14 here regarding the lawsuit that has been filed 15 against Albertsons, in the opiate litigation, opioid 16 litigation. 17 Are you familiar with this matter? 18 A. Yes, I am. 19 Q. When were you first retained to work on 20 this matter? 21 A. Probably May or so of 2020, I believe, 22 maybe. Around there. 23 Q. When you say May of 2020, that would be 24 with respect to the opioid litigation generally? 25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. We have -- my time here today with you has 2 been limited on the understanding that you have 3 provided testimony a number of times before. 4 I just want to confirm that you stand by 5 that prior testimony that you've given within the 6 opioid litigation, as if that was your testimony 7 today? 8 A. Yes. 9 Q. I have handed you what I marked as 10 Exhibit 1, which is a copy of the report that you 11 prepared with respect to the Tarrant County matter 12 as to defendant Albertsons, correct? 13 A. Yes. 14 (Exhibit 1 was marked for 15 identification.) 16 MS. MILLER: Okay. And it's a group 17 exhibit, so it includes your report, and then 18 there's also an Exhibit A. 19 BY MS. MILLER: 20 Q. Can you tell me what Exhibit A represents? 21 A. Exhibit A is my curriculum vitae. 22 Q. Okay. And then there's a second exhibit, 23 and what does that consist of? 24 A. It's the material I considered in 25 preparing the report.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. When were you first retained in the 2 matter of Tarrant County to express opinions as to 3 Albertsons? 4 A. That would have occurred, some initial 5 work, in late 2023, and I think things were then 6 postponed. So the bulk of my work for this case 7 began in February of 2024. 8 Q. You have been deposed and have testified a 9 number of times, both in this litigation and other 10 litigation; is that correct? 11 A. Yes. 12 Q. Okay. So I'm not going to go over all of 13 the rules. 14 The one -- the one thing I do ask, though, 15 is that if you don't understand any of my questions, 16 please let me know, and I'll restate it. 17 Otherwise, if you do provide an answer to 18 a question, I will assume that you understood it. 19 Is that fair? 20 A. Yes. 21 Q. Okay. On the subject of prior testimony, 22 you've given a number of depositions within the 23 opioid litigation that we're talking about, the MDL 24 opioid litigation, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. That list of materials that you considered 2 in preparing the report, is that a comprehensive 3 list of all materials you've reviewed with respect 4 to Albertsons? 5 A. All of the materials that are mentioned in 6 the report since this was filed. I did review some 7 depositions, and those are not listed on here, I 8 don't believe. 9 Q. Okay. And what depositions did you 10 review? 11 A. I think the deposition from Mr. Provenzano 12 and for Covaci. I believe those were the two. 13 Q. Were there any other depositions that you 14 reviewed regarding Albertsons? 15 A. Not that I can remember. 16 Q. And those depositions are referenced 17 within citations in your report, correct? 18 A. Any of the materials here are referenced 19 in the report, yes. 20 Q. Okay. So between materials that are 21 referenced within your report or materials that are 22 listed on your Materials Considered sheet, does that 23 reflect all of the materials that you have reviewed 24 and considered with respect to your opinions as to 25 Albertsons?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. Yes, and with the exception of any 2 experience or knowledge that I've gained through my 3 career as being a pharmacist and regulator, yes. 4 Q. Okay. Great. 5 MS. MILLER: I'm going to hand you what 6 I've marked as Exhibit 2. 7 (Exhibit 2 was marked for 8 identification.) 9 MS. MILLER: This is a copy of your 10 invoices. I apologize. I gave you my copy. 11 BY MS. MILLER: 12 Q. And there are two pages in this document. 13 The first is invoices referenced for February and 14 March of 2024, and the second is April of 2024. 15 Do you see that? 16 A. Yes. 17 Q. Do these invoices reflect all of the work 18 that you have done with respect to the 19 Tarrant County matter as to Albertsons? 20 A. Yes. 21 Q. Okay. Prior to, you mentioned, late 2023, 22 have you -- have you ever done any work with respect 23 to evaluating Albertsons' compliance with controlled 24 substance regulations or standard of care? 25 A. In preparing the other reports that have</p>	<p style="text-align: right;">Page 20</p> <p>1 Committee? 2 A. When I initially joined, there were 10. 3 The number grew to 12, and I believe now there's 15. 4 Q. And who -- how are members of the 5 Executive Committee selected? 6 A. The members of the organization can only 7 be state agencies that have the legislative 8 authority to regulate the practice of pharmacy, so 9 the Indiana Board of Pharmacy or the Illinois Board 10 of Pharmacy. 11 The representatives of those bodies elect 12 the members of the Executive Committee. 13 Q. And are those members of the Executive 14 Committee members of the state boards? 15 So are they representative members of the 16 various state boards of pharmacy? 17 A. Yes, they're appointed by the governor in 18 each state to serve on that board or advisory 19 committee. 20 Q. Okay. So within that pool of members of 21 state boards of pharmacy, then an Executive 22 Committee is elected? 23 A. Correct. 24 Q. And what's the role of the Executive 25 Committee within the NABP?</p>
<p style="text-align: right;">Page 19</p> <p>1 been part of this litigation, I've looked at 2 materials that involve some of the things that 3 Albertsons may have done in terms of policies. 4 But an evaluation or analysis, as I did 5 for this deposition in this case, didn't take place. 6 Q. Okay. And I know you've testified a 7 number of times in the past, and it's listed in your 8 CV. 9 You were the executive director of the 10 National Association of Boards of Pharmacy, or NABP, 11 from 1985 until 2020; is that correct? 12 A. From 1988 to 2020. 1985, I was the test 13 and measurement director. 14 Q. Great. Thank you. As the executive 15 director of NABP, did that also make you a member of 16 the NABP Executive Committee? 17 A. An ex officio member. 18 Q. Okay. And what would have been your role 19 on the Executive Committee as an ex officio member? 20 A. I was the secretary of the committee. 21 And, therefore, my responsibility was to 22 take the notes or official proceedings of the 23 committees, as well as to report to the committee on 24 the activities and actions of the NABP staff. 25 Q. How many members are on the NABP Executive</p>	<p style="text-align: right;">Page 21</p> <p>1 A. It's similar to any board of directors of 2 a corporation or company. They're responsible for 3 the fiscal oversight, strategic planning, and 4 overall operations of the organization. 5 Q. Do they have any role in developing 6 policy? 7 A. Yes, they are the body that actually sets 8 policy. 9 Q. NABP has had various task forces over the 10 years. 11 What is the purpose of a task force for 12 any particular issue? 13 A. A task force is usually created when a 14 state or a member requests NABP to examine a 15 particular issue. 16 Once that's approved by the Executive 17 Committee, NABP will undertake that research and 18 analysis to provide information back to the states 19 collectively or policy recommendations or even 20 suggested model language for the states to use in 21 legislation or regulation to address the issue 22 that's been studied. 23 Q. I understand from your prior testimony 24 that you were previously employed as a pharmacist at 25 Osco Drug, correct?</p>



<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. All right. And I understand over -- the</p> <p>3 time period is about 1981 to 2004 of your entire</p> <p>4 employment with Osco?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And during that time period, you</p> <p>7 were a pharmacy tech, a pharmacist, a pharmacist in</p> <p>8 charge, and a floater, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. When you reference "pharmacist in</p> <p>11 charge," does that include being the pharmacy</p> <p>12 manager, or is that a different person?</p> <p>13 A. A different person.</p> <p>14 Q. Okay. Did you ever have the title of</p> <p>15 pharmacy manager?</p> <p>16 A. No.</p> <p>17 Q. When you were a pharmacist at Osco, who</p> <p>18 would you report to?</p> <p>19 A. I would report to the various store</p> <p>20 managers.</p> <p>21 Q. When you say "store" -- "various store</p> <p>22 managers," do you mean the pharmacy managers or a</p> <p>23 grocery store manager?</p> <p>24 A. The -- the -- when I first started, Osco</p> <p>25 was a standalone, and, therefore, the manager of</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Did that ever change during the</p> <p>3 time that you were at Osco?</p> <p>4 A. No.</p> <p>5 Q. Did you report to a pharmacy manager?</p> <p>6 A. No.</p> <p>7 Q. Was there a pharmacy manager at the store</p> <p>8 when you -- when you worked at Osco?</p> <p>9 A. No.</p> <p>10 Q. Did you ever report to any type of</p> <p>11 district pharmacy manager?</p> <p>12 A. No.</p> <p>13 Q. Okay. You have previously testified that</p> <p>14 you received a bonus during your employment at Osco,</p> <p>15 correct?</p> <p>16 A. No.</p> <p>17 Q. You did not receive any bonuses?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did you have any awareness or</p> <p>20 knowledge of any other pharmacists receiving</p> <p>21 bonuses?</p> <p>22 A. Just the store manager. Not any</p> <p>23 pharmacist.</p> <p>24 Q. Okay. Did you have -- when you were</p> <p>25 working as a pharmacist, did you have any</p>
<p style="text-align: right;">Page 23</p> <p>1 that particular pharmacy.</p> <p>2 And then when it was merged with</p> <p>3 American Stores and Jewel, then it was the Jewel</p> <p>4 manager, the grocery store manager, that was the</p> <p>5 ultimate boss.</p> <p>6 Q. Okay. Did you -- did you report to the</p> <p>7 store manager with respect to any matters pertaining</p> <p>8 to the practice of pharmacy?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So with respect to filling</p> <p>11 prescriptions, you would have reported to the</p> <p>12 overall store manager?</p> <p>13 A. In terms of the metrics and other issues</p> <p>14 that may have arisen with the prescriptions, yes.</p> <p>15 Q. And you made reference to "metrics."</p> <p>16 What type of metrics are you referring to?</p> <p>17 A. The pharmacy would have to report and sit</p> <p>18 down with the store manager on the number of scripts</p> <p>19 that were being -- prescriptions that were being</p> <p>20 filled each week, and then what the store manager</p> <p>21 would allocate in terms of technician assistants and</p> <p>22 also then pharmacist coverage.</p> <p>23 Q. So during the time you were -- you worked</p> <p>24 for Osco, it was the store manager who allocated</p> <p>25 staffing for the pharmacy?</p>	<p style="text-align: right;">Page 25</p> <p>1 understanding as to what the store manager's bonus</p> <p>2 was?</p> <p>3 A. Yes.</p> <p>4 Q. What was your understanding?</p> <p>5 A. There were two components that impacted</p> <p>6 the pharmacy that impacted the overall store's</p> <p>7 bonus; that was the overall operational cost,</p> <p>8 pharmacist staffing, technician staffing, and then</p> <p>9 the pharmacy inventory.</p> <p>10 The store had an inventory goal and budget</p> <p>11 it had to meet. And pharmacy had to stay within</p> <p>12 their budget, and not over-order products that would</p> <p>13 negatively impact the store's budget.</p> <p>14 Q. When you mention pharmacy inventory, does</p> <p>15 that refer to both over-the-counter products as well</p> <p>16 as prescription products?</p> <p>17 A. No, over-the-counter was a separate</p> <p>18 department that had its own manager. And they had</p> <p>19 their own budgets and interactions with the store</p> <p>20 manager.</p> <p>21 Q. So controlling pharmacy inventory would</p> <p>22 have been based on prescription products only?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And it was your prior testimony</p> <p>25 that, to your knowledge, bonuses at Osco were not</p>

7 (Pages 22 - 25)



<p style="text-align: right;">Page 26</p> <p>1 based on script counts, correct?</p> <p>2 A. Correct. There were no bonuses for</p> <p>3 pharmacists.</p> <p>4 Every pharmacist in Chicago is a member --</p> <p>5 was a member of the Teamsters Union. And the</p> <p>6 Teamsters set the pharmacist salaries and increases</p> <p>7 over the years. So that was a collective bargaining</p> <p>8 agreement, I believe, between Osco and the</p> <p>9 Teamsters, and I don't know how that was worked or</p> <p>10 awarded.</p> <p>11 Q. You have previously testified that during</p> <p>12 your time at Osco, you did follow up on red flags</p> <p>13 that were presented for prescriptions for controlled</p> <p>14 substance prescriptions, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you mentioned that that was</p> <p>17 handled at a store level, correct?</p> <p>18 A. Yes.</p> <p>19 Q. How -- how did you learn of what were</p> <p>20 prescriptions that would present red flags?</p> <p>21 MR. ELSNER: Objection.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: That was something that I</p> <p>24 gained from my pharmacy knowledge when --</p> <p>25 pharmacy school, various courses that were</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes.</p> <p>2 Q. You joined NABP in 1981?</p> <p>3 A. '5.</p> <p>4 Q. '85, sorry. I apologize. I'm not good</p> <p>5 with dates. In 1985.</p> <p>6 When you joined NABP, did you believe you</p> <p>7 had sufficient knowledge regarding red flags as they</p> <p>8 related to controlled substance prescriptions?</p> <p>9 A. I'm not understanding the question, but</p> <p>10 maybe I can say it back to you to make sure.</p> <p>11 Q. Sure.</p> <p>12 A. In practice, the red flags, I felt</p> <p>13 confident of in how to identify those red flags.</p> <p>14 When I moved to NABP, I was always</p> <p>15 learning new things about red flags, working more</p> <p>16 closely with the DEA and other groups.</p> <p>17 So I don't think I knew everything, and I</p> <p>18 was always willing and able to learn new things</p> <p>19 about red flags.</p> <p>20 (Exhibit 3 was marked for</p> <p>21 identification.)</p> <p>22 BY MS. MILLER:</p> <p>23 MS. MILLER: I'm going to hand you what</p> <p>24 I'm marking as Exhibit 3.</p> <p>25</p>
<p style="text-align: right;">Page 27</p> <p>1 taught. And then based upon working with other</p> <p>2 pharmacists when I was a technician, intern,</p> <p>3 and a student pharmacist, I was also then</p> <p>4 advised as to what red flags were and what the</p> <p>5 procedures would be and dealing with those.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. When you say you were "advised as to what</p> <p>8 red flags were and what the procedures would be,"</p> <p>9 who were you advised by?</p> <p>10 A. The various pharmacists who I worked with</p> <p>11 while I was a technician, student, and pharmacy</p> <p>12 intern.</p> <p>13 Q. Okay. And so you were a pharmacy intern</p> <p>14 or a tech at Osco, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so your supervisors at Osco</p> <p>17 provided information on red flags and how to resolve</p> <p>18 them?</p> <p>19 A. Correct, the staff pharmacist and the</p> <p>20 pharmacist in charge.</p> <p>21 Q. You mentioned that you also gained</p> <p>22 knowledge from pharmacy school.</p> <p>23 Do you agree that pharmacists are trained</p> <p>24 in pharmacy school to learn and understand red flags</p> <p>25 with respect to controlled substance prescriptions?</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MS. MILLER:</p> <p>2 Q. So Exhibit 3 that I've handed you is an</p> <p>3 article or an interview that was prepared in</p> <p>4 September 2014.</p> <p>5 Do you recall doing this interview?</p> <p>6 A. Vaguely.</p> <p>7 Q. Okay. I just wanted to direct you to</p> <p>8 Page 3 of the interview, or of the document.</p> <p>9 MR. ELSNER: Mr. Catizone, you can take</p> <p>10 whatever time you need to review this if you</p> <p>11 haven't seen this in a long time.</p> <p>12 THE WITNESS: Okay.</p> <p>13 BY MS. MILLER:</p> <p>14 Q. Yeah, the only question I have, which I</p> <p>15 don't think is controversial, relates to --</p> <p>16 actually, the question is on Page 2 and then the</p> <p>17 answer is on Page 3.</p> <p>18 The question is, "How can a pharmacist</p> <p>19 decide whether a prescription passes the truth</p> <p>20 test?"</p> <p>21 And your answer was, "A pharmacist is</p> <p>22 educated and trained to evaluate situations every</p> <p>23 day and with every patient in order to make a</p> <p>24 decision on whether a prescription is for a</p> <p>25 legitimate medical need and thus pass the truth</p>

<p style="text-align: right;">Page 30</p> <p>1 test. This decision draws from extensive training 2 and education a pharmacist receives prior to being 3 licensed to practice and the red flags that should 4 be detected when the prescription is presented." 5 Do you see that? 6 A. Yes, I see that. 7 Q. Okay. Do you -- did you provide this -- 8 do you recall providing this answer in this 9 interview? 10 A. Yes. 11 Q. Okay. And do you agree with this answer 12 today? 13 A. I agree, but in the context of Page 1, 14 where my response says that "There's no specific 15 criteria, and every situation is unique and would 16 need to be evaluated at the time using information 17 available and professional judgment of the 18 pharmacist." 19 So I would say, in the context there's 20 information needed, the pharmacist needs to evaluate 21 that information, and then that comment is true. 22 Q. Okay. And you agree that pharmacists 23 receive extensive training and education prior to 24 being licensed to practice to be able to identify 25 those situations?</p>	<p style="text-align: right;">Page 32</p> <p>1 bit. 2 So starting with the national and state 3 laws, obviously, in the national laws, we have the 4 Controlled Substances Act, correct? 5 A. Correct. 6 Q. And then there are administrative 7 decisions from the DEA that reflect expectations for 8 pharmacy standard of care as well, correct? 9 A. Correct. 10 Q. Okay. With respect to state laws, in 11 particular, we are talking about the State of Texas 12 in this case. 13 In Texas, pharmacies and pharmacists are 14 subject both to the DEA regulations or federal laws 15 and Texas state law, correct? 16 A. Texas and every other state, yes. 17 Q. Okay. For the practice of Texas, though, 18 pharmacists and pharmacies within Texas would not be 19 subject to other state laws, they're subject to 20 Texas law, correct? 21 A. Correct. 22 Q. And pharmacies and pharmacists in Texas 23 are regulated by the Texas Board of Pharmacy, 24 correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Yes, they receive education, yes. 2 Q. Okay. I want to direct you to Page 8 to 9 3 of your report. 4 As I understand, you have been retained in 5 this case to provide opinions regarding pharmacy 6 standard of care; is that correct? 7 A. Correct. 8 Q. On Page 8, the bottom of Page 8, you -- 9 there's a paragraph that starts with "Standards of 10 care." 11 If you move down to that paragraph, 12 there's the last line in that paragraph starts, 13 "Those practices and their standard of care are 14 reflected in national and state laws and regulations 15 as well as pharmacy practice organizations and 16 industry guidance." 17 Do you see that? 18 A. Yes, I do. 19 Q. Okay. So the national and state laws and 20 regulations, pharmacy practice organizations, and 21 industry guidance, am I understanding correctly that 22 you are referring to those as places which help 23 establish the pharmacy standard of care? 24 A. Yes, some of the sources, yes. 25 Q. Okay. I want to break those down a little</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And you have outlined regulations, the 2 Texas Professional Responsibility Regulations for 3 Pharmacies and Pharmacists are the regulations that 4 govern pharmacies within Texas, correct? 5 A. That's a sampling of the regulations that 6 are pertinent for this report, yes. 7 Q. Correct. And they're on Page 53 to 55 of 8 your report. 9 You've referenced that the Texas Board of 10 Pharmacy has codified red flag factors in Board 11 Rule Section 291.29(f), correct? 12 A. Yes, that's in the report. 13 Q. Okay. And that's what we're mostly 14 focused on, or at least my questions will mostly be 15 focused on, as pertaining to the identification of 16 red flags. 17 And those -- those red flag factors were 18 codified in 2018, correct? 19 A. Yes. 20 Q. Are you aware of whether there were any 21 red flag factors that were codified in the Texas 22 Board of Pharmacy regulations prior to 2018? 23 A. I -- I'm not -- not specifically, no. 24 Q. Okay. In your analysis of the Texas 25 regulations, did you -- did you look at any of the</p>

<p style="text-align: right;">Page 34</p> <p>1 legislative history pertaining to those regulations  2 to see what types of things were proposed but had  3 been rejected by the Texas Board of Pharmacy or the  4 Texas legislature?  5 A. No.  6 Q. And then the Texas Board of Pharmacy also  7 issued a guidance document to pharmacies in  8 February 2018, which you've referenced on Page 55 of  9 your report.  10 And that guidance document was referenced.  11 It was called "You Might Be A Pill Mill If ..."  12 Correct?  13 A. Yes.  14 Q. And is it your understanding that between  15 the regulations, the Board of Pharmacy regulations  16 that we've just referenced and this guidance  17 document, that this reflected what the Texas Board  18 of Pharmacy had considered as red flags for -- that  19 pharmacies should be aware of?  20 MR. ELSNER: Objection.  21 THE WITNESS: I'm not aware if there was  22 other materials that may have been issued by  23 the Texas board. So I can say that this was  24 probably some, but I can't say whether it was  25 definitive and the only documents issued by the</p>	<p style="text-align: right;">Page 36</p> <p>1 in a minute.  2 Okay. Sticking with Page 8 to 9 of your  3 report, we talked about state laws, national and  4 state laws and regulations.  5 The next one you reference is pharmacy  6 practice organizations.  7 What are you referring to when you mean  8 "pharmacy practice organizations"?  9 A. Organizations such as the United States  10 Pharmacopeial, P-h-a-r-m-a-c-o-p-i-e-a-l [sic],  11 which is a standard-setting organization and also  12 approves drug products and manufacturers.  13 Various groups like the practice groups  14 that have clinicians that develop guidelines and  15 standards that are then referenced or used by the  16 Centers for Disease Control or by boards of pharmacy  17 in their own laws and regulations.  18 Q. Okay. So other than the US Pharmacopeia,  19 can you give me other examples of organizations that  20 establish guidelines and standards?  21 And I'm specifically focused on with  22 respect to dispensing controlled substances.  23 A. The American Pharmacists Association; the  24 National Association of Drug Inspector  25 Investigators, NADII; the Association or Federation</p>
<p style="text-align: right;">Page 35</p> <p>1 Texas board in regard to this.  2 BY MS. MILLER:  3 Q. Okay. Sitting here today, you're not  4 aware of anything else; is that correct?  5 A. Correct.  6 Q. When talking about national -- national  7 laws, and specifically the DEA, would you agree that  8 the DEA has not published a specific, defined set of  9 red flags that are mandatory for pharmacists to  10 follow in dispensing controlled substances?  11 A. I would not agree with that.  12 Q. Okay. What -- in what way do you disagree  13 with that?  14 A. I think earlier you mentioned that the DEA  15 used administrative actions as a means to talk about  16 the national law and that, but there were also court  17 cases. And the DEA published those in the Federal  18 Register, and then used the Federal Register and the  19 administrative hearings as guidance documents or  20 tools when the DEA talked to pharmacy or pharmacy  21 groups.  22 And, in fact, the DEA made presentations  23 across the country on red flags using those very  24 same documents and exhibits.  25 Q. Okay. Actually, we will get back to that</p>	<p style="text-align: right;">Page 37</p> <p>1 of Regulatory Boards; the National Community  2 Pharmacists Association; the American Society of  3 Health-System Pharmacists; the American Medical  4 Association; the Family Practitioners Association.  5 There's probably a number of other ones  6 that I can't recall right now.  7 Q. Okay. Would those organizations include  8 state boards of pharmacy?  9 A. Not officially, but members of state  10 boards may have served on those committees or be a  11 part of those organizations.  12 Q. Okay. Would you put NABP in that  13 category?  14 A. Yes.  15 Q. How about NACDS, the National Association  16 of Chain Drug Stores?  17 A. To a limited degree.  18 Q. Okay. When you say "to a limited degree,"  19 what do you mean?  20 A. NACDS wasn't usually involved in standard  21 setting. If an issue arised -- arose, then NACDS  22 may issue a position statement or paper, and then  23 that would be evaluated and possibly used.  24 Q. What about state medical boards?  25 A. Yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. You would include them?</p> <p>2 A. Yes.</p> <p>3 Q. How about the Federation of State Medical</p> <p>4 Boards?</p> <p>5 A. Yes.</p> <p>6 Q. Looking to the organizations we've</p> <p>7 identified, did the -- are you aware of the American</p> <p>8 Pharmacists Association issuing any guidelines with</p> <p>9 respect to identification of red flags with</p> <p>10 controlled substance dispensing?</p> <p>11 A. They issued a number of guidance</p> <p>12 documents, but I can't recall specific documents.</p> <p>13 Q. Okay. Are you aware of the National</p> <p>14 Association of Drug Inspectors, whether they issued</p> <p>15 any guidance documents with respect to</p> <p>16 identification of red flags and controlled substance</p> <p>17 dispensing?</p> <p>18 A. Same response. I can't identify specific,</p> <p>19 but I'm aware that they did.</p> <p>20 Q. Okay. You're aware that they issued</p> <p>21 guidelines with respect to red flags specifically?</p> <p>22 A. Red flags and diversion, yes.</p> <p>23 Q. Okay. But you're not aware of which ones</p> <p>24 those --</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. ELSNER: Objection.</p> <p>2 THE WITNESS: To a limited degree.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. And what do you mean by that?</p> <p>5 A. NACDS represents the corporate structures</p> <p>6 of chain pharmacies and not the individual</p> <p>7 pharmacists and not the individual patients.</p> <p>8 So they are truly a trade group, whose</p> <p>9 best interest, at times, is the financial benefit of</p> <p>10 its members and not necessarily the patient care.</p> <p>11 Q. Do you believe that that renders the</p> <p>12 information that NACDS issued, with respect to</p> <p>13 controlled substance dispensing, unreliable?</p> <p>14 A. No.</p> <p>15 MR. ELSNER: Objection.</p> <p>16 THE WITNESS: I think everything would</p> <p>17 have to be evaluated, and people used what</p> <p>18 information they found reliable or not.</p> <p>19 BY MS. MILLER:</p> <p>20 Q. Okay. How about NABP? Would you consider</p> <p>21 that to be a reliable source, one which pharmacies</p> <p>22 could look to for information regarding controlled</p> <p>23 substance dispensing?</p> <p>24 A. Probably during the years '85 to 2020, the</p> <p>25 most reliable in the country, I would say.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. The National Community Pharmacy</p> <p>2 Association, are you aware of any guidance that they</p> <p>3 issued with respect to red flags?</p> <p>4 A. The same response as the prior two.</p> <p>5 Q. Okay. With respect to the American</p> <p>6 Medical Association, would you consider that</p> <p>7 information coming from the American Medical</p> <p>8 Association to be reliable information with respect</p> <p>9 to the use of controlled substances for pain relief?</p> <p>10 MR. ELSNER: Objection.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: I would have to see what the</p> <p>13 information is. And the reason I say that is</p> <p>14 that the AMA questioned and criticized the role</p> <p>15 of pharmacists in dispensing prescriptions, and</p> <p>16 that was not information I would consider true</p> <p>17 or accurate.</p> <p>18 But other information they did issue</p> <p>19 regarding opioids and prescribing, I would</p> <p>20 consider true and accurate.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Okay. With respect to NACDS, would you --</p> <p>23 would it be reasonable for a pharmacy to rely on</p> <p>24 information that was presented by NACDS with respect</p> <p>25 to the dispensing of controlled substances?</p>	<p style="text-align: right;">Page 41</p> <p>1 I was joking on that one. But, yes,</p> <p>2 they're reliable.</p> <p>3 Q. What about the Federation of State Medical</p> <p>4 Boards?</p> <p>5 Do you believe that it would have been</p> <p>6 reliable for a pharmacy to look to the FSMB for</p> <p>7 information pertaining to controlled substance</p> <p>8 prescribing?</p> <p>9 A. Again, the information would need to be</p> <p>10 evaluated and that information used as appropriate.</p> <p>11 Q. So when you say "the information would</p> <p>12 need to be evaluated," are you saying that it would</p> <p>13 not have been reasonable for a pharmacy to have</p> <p>14 relied on information from the FSMB relating to the</p> <p>15 use of controlled substances for pain?</p> <p>16 MR. ELSNER: Objection.</p> <p>17 THE WITNESS: My answer would be if the</p> <p>18 information was clinically based and it was</p> <p>19 evidence-based that could be verified, the</p> <p>20 answer would be "yes."</p> <p>21 If it was politically based, then I don't</p> <p>22 think the pharmacies should rely upon that.</p> <p>23 And as an example, the AMA has opposed</p> <p>24 pharmacists administering immunizations, but</p> <p>25 the data have showed that pharmacists are</p>

<p style="text-align: right;">Page 42</p> <p>1 administering more immunizations than 2 physicians. 3 So for a pharmacy not to administer 4 because the AMA said not to, I don't believe 5 that's a clinical- or evidence-based 6 recommendation or information. 7 BY MS. MILLER: 8 Q. Okay. You also referenced in your report, 9 on Page 9, industry guidance as forming the basis of 10 a pharmacy standard of care. 11 What are you referring to when you say 12 "industry guidance"? 13 A. Guidance issued by the DEA, state boards 14 of pharmacy, medical boards, guidance to the 15 industry rather than industry-developed guidance. 16 Q. Okay. And would you include NABP in that 17 category? 18 A. Yes. 19 Q. So with respect to the DEA, would it -- 20 would -- in your opinion, would it have been 21 reasonable for a pharmacy to rely on information it 22 received from DEA with respect to controlled 23 substance dispensing? 24 A. Yes. 25 Q. With respect to state boards of pharmacy,</p>	<p style="text-align: right;">Page 44</p> <p>1 Beyond that, I really can't say. 2 Q. Okay. As regarding the FDA, the Food and 3 Drug Administration, in your opinion, would it have 4 been reasonable for pharmacies to have relied on 5 information from the FDA with respect to controlled 6 substance prescribing or dispensing? 7 MR. ELSNER: Objection. 8 THE WITNESS: Yes, if it's clinical and 9 it's evidence-based. 10 BY MS. MILLER: 11 Q. When you say "if it's clinical and it's 12 evidence-based," can you -- can you explain for me a 13 little bit more what you mean by that? 14 A. Sure. The FDA is a complex organization 15 with many interests, or agency. And sometimes they 16 issue opinions that stray into the political arena. 17 And so an FDA advisory committee may 18 recommend against allowing birth control pills or 19 hormonal tablets being over the counter, and the FDA 20 may override that objection and say that 21 over-the-counter hormonal products are safe and 22 effective. 23 And so when it gets into those areas that 24 may not be scientific or evidence-based and it 25 becomes a political issue, then I think the</p>
<p style="text-align: right;">Page 43</p> <p>1 specifically the Texas State Board of Pharmacy, 2 would it have been reasonable for pharmacies in 3 Texas to have relied on information from the state 4 board of pharmacy with respect to issues surrounding 5 dispensing of controlled substance prescriptions? 6 A. Yes. 7 Q. With respect to medical boards, 8 specifically the Texas Medical Board, would it have 9 been reasonable for pharmacies to rely on the 10 information coming from the Texas Medical Board with 11 respect to issues surrounding controlled substance 12 dispensing? 13 A. I can't answer definitively, because I 14 wasn't and I'm not as familiar with the medical 15 boards as I was -- am with the pharmacy boards, so I 16 can't say. 17 Q. When you say you're not as familiar with 18 the medical board, as a general category, being a 19 state medical board, do you believe it's reasonable 20 for a pharmacy to look to the medical board for 21 information with respect to controlled substance 22 prescribing and dispensing? 23 A. Yes, in two areas; clinically and 24 evidence-based information, and, two, what the rules 25 and regulations of the state medical board may be.</p>	<p style="text-align: right;">Page 45</p> <p>1 information has to be evaluated on a case-by-case 2 basis. 3 Q. Okay. So for representations from the 4 FDA, with respect to the safety or prescribing 5 parameters for controlled substances, would it have 6 been reasonable for pharmacies to rely on that type 7 of information from the FDA? 8 MR. ELSNER: Objection. 9 THE WITNESS: If it followed the advisory 10 committee recommendations and it could be 11 clinically or evidence-based, yes. 12 BY MS. MILLER: 13 Q. We talked about the NACDS, the National 14 Association of Chain Drug Stores, briefly. 15 NABP worked with NACDS on various task 16 forces over the years, correct? 17 A. Correct. 18 Q. And my understanding is NACDS also 19 presented for its members a pharmacy law day at an 20 annual conference. 21 Do you recall that? 22 A. I'm not familiar with that. 23 Q. Okay. Have you ever attended an NACDS 24 conference? 25 A. No.</p>



<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. We talked briefly about the</p> <p>2 Federation of State Medical Boards.</p> <p>3 Can you describe for me -- I'm going to</p> <p>4 refer to it as the "FSMB," if that's okay.</p> <p>5 A. Yes, yes.</p> <p>6 Q. What is the FSMB?</p> <p>7 A. It's an organization similar to NABP in</p> <p>8 that the members of FSMB are the state medical</p> <p>9 boards and jurisdictions that regulate the practice</p> <p>10 of medicine.</p> <p>11 Q. The FSMB issued guidelines regarding the</p> <p>12 use of controlled substances for pain in 1998, which</p> <p>13 later became a policy, a model policy, for use of</p> <p>14 controlled substances.</p> <p>15 Do you recall those guidelines?</p> <p>16 A. I recall, in general, them being issued,</p> <p>17 but not the specific guidelines.</p> <p>18 Q. Okay. With respect to treatment</p> <p>19 guidelines that are issued by the Federation of</p> <p>20 State Medical Boards, do you -- do you believe that</p> <p>21 those would have represented the generally accepted</p> <p>22 standard of care for prescribers, as a statement of</p> <p>23 the generally accepted standard of care for</p> <p>24 prescribers?</p> <p>25 MR. ELSNER: Objection.</p>	<p style="text-align: right;">Page 48</p> <p>1 understanding that a "red flag," as we are using it</p> <p>2 in the context of this litigation, is intended to be</p> <p>3 a warning about the characteristics of certain</p> <p>4 prescriptions that should cause a pharmacist to look</p> <p>5 more closely at the script?</p> <p>6 A. As a general description, yes. If there's</p> <p>7 a particular page or so that you want me to look at</p> <p>8 then --</p> <p>9 Q. No, that's just a general question.</p> <p>10 A. Okay.</p> <p>11 Q. If -- to the extent a prescription is not</p> <p>12 subject to a red flag or circumstances that would</p> <p>13 cause the pharmacist to question the legitimacy of</p> <p>14 the prescription, am I correct that a pharmacist can</p> <p>15 appropriately fill that script without doing the</p> <p>16 extra investigation that's called for when there's a</p> <p>17 red flag?</p> <p>18 MR. ELSNER: Objection.</p> <p>19 THE WITNESS: I'm not fully understanding</p> <p>20 the question.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Sure. I'll rephrase it.</p> <p>23 A. Thank you.</p> <p>24 Q. So my first question was, the purpose of a</p> <p>25 red flag is to alert the pharmacist that there is a</p>
<p style="text-align: right;">Page 47</p> <p>1 THE WITNESS: I can't comment. That's</p> <p>2 outside of my area of expertise, so I wouldn't</p> <p>3 know.</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Are there any publications that you would</p> <p>6 point to that pharmacies and pharmacists could look</p> <p>7 to for reliable information regarding controlled</p> <p>8 substance dispensing?</p> <p>9 MR. ELSNER: Objection.</p> <p>10 THE WITNESS: Some of the things that</p> <p>11 we've mentioned before, the Controlled</p> <p>12 Substance Act.</p> <p>13 The DEA also issues the Pharmacist's</p> <p>14 Manual, and then the various state boards of</p> <p>15 pharmacy have issued various guidance</p> <p>16 documents.</p> <p>17 And as you mentioned, the Texas Board of</p> <p>18 Pharmacy sent "You Know You're A Pill Mill</p> <p>19 If ..."</p> <p>20 There were various publications and</p> <p>21 documents issued by state boards.</p> <p>22 BY MS. MILLER:</p> <p>23 Q. Okay. I'm going to turn to the discussion</p> <p>24 of red flags.</p> <p>25 I understand -- am I correct in</p>	<p style="text-align: right;">Page 49</p> <p>1 question regarding the legitimacy of the</p> <p>2 prescription that would require the pharmacist to do</p> <p>3 additional investigation, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So my question is, if there's a</p> <p>6 prescription, a controlled substance prescription,</p> <p>7 that does not present a red flag and does not</p> <p>8 present circumstances that would cause a pharmacist</p> <p>9 to question the legitimacy of that prescription, can</p> <p>10 the pharmacist fill that prescription without doing</p> <p>11 that extra investigation that's required when you</p> <p>12 have a red flag?</p> <p>13 MR. ELSNER: Objection.</p> <p>14 THE WITNESS: So if I can repeat back to</p> <p>15 make sure I understand.</p> <p>16 You're saying that if a pharmacist is</p> <p>17 presented a prescription and there are no</p> <p>18 therapeutic issues with the medications within</p> <p>19 the prescribed dosage range and therapy, it's</p> <p>20 appropriate for the patient, the physician is</p> <p>21 writing within their scope of practice, and if</p> <p>22 it's a controlled substance, there are no red</p> <p>23 flags, can the pharmacist fill that</p> <p>24 prescription?</p> <p>25 Is that the question?</p>

<p style="text-align: right;">Page 50</p> <p>1 BY MS. MILLER:</p> <p>2 Q. Fill that prescription without having to</p> <p>3 do additional investigation to look further into the</p> <p>4 prescription?</p> <p>5 A. If it's a controlled substance</p> <p>6 prescription, that separates that prescription from</p> <p>7 noncontrolled and requires the pharmacist to do</p> <p>8 additional investigation to ensure there are no red</p> <p>9 flags.</p> <p>10 If there are no red flags after that</p> <p>11 analysis, then the pharmacist can fill the</p> <p>12 prescription.</p> <p>13 Q. Okay. Under -- and I understand from your</p> <p>14 report and prior testimony that the concept of red</p> <p>15 flags for pharmacists have been around for a long</p> <p>16 time, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Would you agree with me that the</p> <p>19 term "red flag" was not always used in general</p> <p>20 vernacular for pharmacists, even though the concept</p> <p>21 was there?</p> <p>22 A. That's hard to say, because I think in my</p> <p>23 report, I mention how far back red flags are</p> <p>24 mentioned. And it goes way, way back.</p> <p>25 They said -- but in terms of the jargon, I</p>	<p style="text-align: right;">Page 52</p> <p>1 A. In that context, I would say there is a</p> <p>2 certain magic to it.</p> <p>3 I think what we talked about just a</p> <p>4 few minutes ago, if it's a controlled substance</p> <p>5 prescription, and I look at it, there's one</p> <p>6 assessment.</p> <p>7 If I see a red flag, then the magic kicks</p> <p>8 in, and I'm in a whole different position or</p> <p>9 analysis.</p> <p>10 So I would say, in terms of the magic, for</p> <p>11 me, as a pharmacist, that would be the magic, to say</p> <p>12 this is something that requires further analysis.</p> <p>13 Q. I understand what you're saying. I'm more</p> <p>14 focused on just the term "red flag," right, that</p> <p>15 whether the pharmacist recognizes these are</p> <p>16 suspicious circumstances, whether the pharmacist</p> <p>17 calls it a "red flag" or not is not really</p> <p>18 determinative of whether they have properly</p> <p>19 addressed this prescription?</p> <p>20 MR. ELSNER: Objection.</p> <p>21 THE WITNESS: I'm having a difficult time</p> <p>22 agreeing with that because the red flags have</p> <p>23 been identified by the DEA and boards of</p> <p>24 pharmacy. So that has a special nomenclature</p> <p>25 and a special attachment to a particular</p>
<p style="text-align: right;">Page 51</p> <p>1 would say "red flag" was a common term within the</p> <p>2 jargon. But I don't know when it started or --</p> <p>3 so ...</p> <p>4 Q. Okay. Would you agree with me that</p> <p>5 there's no magic to the term "red flag"?</p> <p>6 It's representing a concept of a</p> <p>7 prescription that presents suspicious circumstances?</p> <p>8 MR. ELSNER: Objection.</p> <p>9 THE WITNESS: I don't understand "magic."</p> <p>10 Define for me what do you mean by -- I'm</p> <p>11 sorry --</p> <p>12 BY MS. MILLER:</p> <p>13 Q. Sure.</p> <p>14 A. -- but I really didn't understand what you</p> <p>15 mean.</p> <p>16 Q. Yeah. No, I understand.</p> <p>17 So if a pharmacist understood that he or</p> <p>18 she was to do additional investigation when</p> <p>19 suspicious circumstances presented themselves in a</p> <p>20 controlled substance prescription, there's no magic</p> <p>21 to that pharmacy -- pharmacist calling it a "red</p> <p>22 flag"?</p> <p>23 The important part is that they identify</p> <p>24 that it's a suspicious circumstance, and they follow</p> <p>25 up on it?</p>	<p style="text-align: right;">Page 53</p> <p>1 situation with a prescription, patient, or</p> <p>2 prescriber.</p> <p>3 So it would trigger a magic or a response</p> <p>4 from the pharmacist saying "This is a red</p> <p>5 flag," and use that term.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. And is it your opinion that that was</p> <p>8 always the case, or has that changed over time?</p> <p>9 A. That's always been the case.</p> <p>10 (Exhibit 4 was marked for</p> <p>11 identification.)</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MS. MILLER: I hand you what I've marked</p> <p>14 as Exhibit 4 to your deposition.</p> <p>15 BY MS. MILLER:</p> <p>16 Q. This is a document from the DEA dated</p> <p>17 February 2000 entitled the "Pharmacist's Guide to</p> <p>18 Prescription Fraud."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Have you seen this document before?</p> <p>22 A. I may have. I can't recall.</p> <p>23 Q. Okay. In this, it's addressing</p> <p>24 prescriptions, controlled substance prescriptions</p> <p>25 that -- in determining whether they are issued for</p>



<p style="text-align: right;">Page 54</p> <p>1 legitimate medical purposes, correct?</p> <p>2 A. If I could have a few minutes to read the</p> <p>3 document.</p> <p>4 Q. Sure.</p> <p>5 A. Thank you.</p> <p>6 Okay. I'm sorry, what was the question?</p> <p>7 Q. Do you agree that this document addresses</p> <p>8 guidance regarding helping a pharmacist determine</p> <p>9 whether a prescription was issued for a legitimate</p> <p>10 medical purpose?</p> <p>11 A. After reading the document, I recall why</p> <p>12 it was issued. And I saw it, and I would say that</p> <p>13 was part of the reason.</p> <p>14 The other reason was there were reports to</p> <p>15 the DEA and state boards of forged prescription and</p> <p>16 stolen prescription blanks.</p> <p>17 So the DEA was reacting to that particular</p> <p>18 incident, as well as then affirming that the</p> <p>19 pharmacist and the pharmacy have legal</p> <p>20 responsibilities that they have to meet, so ...</p> <p>21 Q. Okay. And referring down to towards the</p> <p>22 bottom of the first page, there's a section that</p> <p>23 says, "The following criteria may indicate that the</p> <p>24 purported prescription was not issued for a</p> <p>25 legitimate medical purpose."</p>	<p style="text-align: right;">Page 56</p> <p>1 A. In this particular document, yes, it's not</p> <p>2 used.</p> <p>3 Q. In your report, you reference some DEA</p> <p>4 decisions that were issued over time. And</p> <p>5 specifically in your report, you cited to a</p> <p>6 decision, United Prescription Services, that was</p> <p>7 issued in 2007.</p> <p>8 A. What page?</p> <p>9 Q. Page 27.</p> <p>10 And then you reference Medicine Shoppe</p> <p>11 Jonesboro as another decision on that page, correct?</p> <p>12 MR. ELSNER: I'm sorry, I missed the</p> <p>13 first --</p> <p>14 THE WITNESS: I don't see United</p> <p>15 Prescription in here as a reference.</p> <p>16 BY MS. MILLER:</p> <p>17 Q. So if you look at the paragraph that</p> <p>18 starts towards the top, "The corresponding</p> <p>19 responsibility to ensure the dispensing of valid</p> <p>20 prescriptions extends to the pharmacy itself. The</p> <p>21 Holiday decision was not the first DEA decision to</p> <p>22 hold pharmacies responsible."</p> <p>23 And then you cite, "Similar opinions were</p> <p>24 issued in Medicine Shoppe Jonesboro and United</p> <p>25 Prescription Services."</p>
<p style="text-align: right;">Page 55</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And following that sentence,</p> <p>4 there are a number of bullet points, including, "The</p> <p>5 prescriber writes significantly more prescriptions</p> <p>6 (or in larger quantities) compared to other</p> <p>7 practitioners in your area."</p> <p>8 And then there are a number of bullet</p> <p>9 points that follow that, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Would you characterize the items</p> <p>12 identified in these bullet points as the red flags</p> <p>13 that we've been talking -- some red flags that we</p> <p>14 have been talking about pertaining to controlled</p> <p>15 substance prescriptions?</p> <p>16 A. Some of the red flags.</p> <p>17 Q. Correct. And so, though these may not</p> <p>18 identify all of the red flags that have been</p> <p>19 identified over time, would you agree with me that</p> <p>20 the DEA is providing guidance on some red flags?</p> <p>21 A. I think they're identifying some of those</p> <p>22 red flags.</p> <p>23 Q. Okay. Would you agree with me that the</p> <p>24 DEA does not use the term "red flags" in this</p> <p>25 document?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Okay. Thank you.</p> <p>2 Q. Do you see that? Okay.</p> <p>3 And the United Prescription Services</p> <p>4 decision was issued in 2007, as you reference in</p> <p>5 footnote 55, and the Medicine Shoppe Jonesboro</p> <p>6 decision was issued in 2008, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And you've cited some other DEA</p> <p>9 administrative decisions as providing information</p> <p>10 regarding different types of red flags, correct, and</p> <p>11 that includes the Holiday CVS decision in 2012,</p> <p>12 correct.</p> <p>13 You mentioned that following -- or in</p> <p>14 addition to the DEA decisions, that the DEA then</p> <p>15 prepared presentations that it gave to the industry</p> <p>16 identifying red flags as well, correct?</p> <p>17 A. Yes.</p> <p>18 (Exhibit 5 was marked for</p> <p>19 identification.)</p> <p>20 MS. MILLER: I'm going to hand you what</p> <p>21 I've marked as Exhibit 5.</p> <p>22 BY MS. MILLER:</p> <p>23 Q. I will represent to you that this an</p> <p>24 excerpt from a very lengthy PowerPoint document that</p> <p>25 the vast majority of it did not make any reference</p>

<p style="text-align: right;">Page 58</p> <p>1 to red flags. But there is one page that made a 2 reference to red flags, so that's the page that I 3 added to this document. 4 Do you see that? 5 A. Yes. 6 Q. Are you familiar with this presentation? 7 A. I am not. 8 Q. Okay. This is a presentation that was 9 given by Joseph Rannazzisi to the American Society 10 of Interventional Pain Physicians on June 9th, 2012. 11 Do you see that? 12 A. I see that, yes. 13 Q. The page that lists potential red flags 14 has a number of references. 15 And would you agree that these are red 16 flags that the DEA provided guidance to industry 17 regarding? 18 MR. ELSNER: Objection. 19 THE WITNESS: I will say I see those 20 listed here on the page, but I'd like to see 21 the preceding page and any citations that 22 Mr. Rannazzisi may have used to address these. 23 Other than that, I can simply say, yeah, 24 there are a list of potential red flags on this 25 slide.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Now that I see it, yes. But I haven't 2 seen it in 10 years, 20 years. 3 Q. Sure. Feel free to take your time to look 4 at the email exchange. 5 It starts on the -- the first email in the 6 exchange starts on February 17, 2014, and it's an 7 email from you to Mr. Giacalone. 8 Who is Mr. Giacalone? 9 A. Mr. Giacalone was in the general counsel's 10 office of Cardinal Health, which is one of the 11 primary wholesale distributors. 12 Q. And the email to you, the subject is 13 entitled "Red Flags." 14 And you state, "Bob, Here are some 15 suggestions taken from the Quarles &amp; Brady 16 presentation." 17 And below that, am I correct in 18 understanding you are listing some examples of red 19 flags, correct? 20 A. Yes. 21 Q. Okay. You make reference to -- with 22 respect to those red flags, you make reference to 23 certain attachments. 24 And do you see that there are attachments 25 to the email?</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MS. MILLER: 2 Q. Okay. I can get you the whole 3 presentation on a break. 4 A. Thank you. 5 Q. With respect to the red flags that are 6 listed on Page 2 of this document, do you agree that 7 these red flags are consistent with the red flags 8 that are reflected in some of the DEA administrative 9 decisions? 10 A. Yes, some of the red flags, yes. 11 (Exhibit 6 was marked for 12 identification.) 13 THE WITNESS: Thank you. 14 MS. MILLER: I hand you what I've marked 15 as Exhibit 6 to your deposition. 16 BY MS. MILLER: 17 Q. This document is an email exchange between 18 you and Robert -- I'm going to mispronounce his last 19 name. 20 A. Giacalone. 21 Q. -- Giacalone, as well as a couple of other 22 folks. But, predominantly, the communications are 23 between you and Mr. Giacalone, correct? 24 A. Correct. 25 Q. Do you recall this email exchange?</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I see the attachment here, yes. 2 Q. Okay. Did you -- did you prepare these 3 attachments and attach them to this email? 4 MR. ELSNER: Objection. 5 You can answer if you know. 6 THE WITNESS: Yeah, I can't recall, but I 7 don't have anything to say that I didn't, 8 so ... 9 BY MS. MILLER: 10 Q. Okay. What was the purpose of your email 11 to Mr. Giacalone? 12 A. Sure. Cardinal Health and some other 13 sponsors had provided a grant to NABP to develop, 14 with a stakeholder group, a video on red flags. 15 And we were working with Mr. Giacalone, as 16 a representative of that group, to try and get the 17 outline and content for the video together. 18 Q. Got it. So your email on February 17th, 19 2014, to Mr. Giacalone, is this an outline of the 20 red flags you were proposing be included in the 21 video? 22 MR. ELSNER: Objection. 23 THE WITNESS: They were some suggestions, 24 yes. And it also says it was just a starting 25 point, so ...</p>

<p style="text-align: right;">Page 62</p> <p>1 BY MS. MILLER:</p> <p>2 Q. Great. In referencing the attachments,</p> <p>3 were those attachments the support that you were</p> <p>4 providing for the basis for each particular red</p> <p>5 flag?</p> <p>6 A. No.</p> <p>7 Q. So when you say, in the first section,</p> <p>8 Number 1, "Dispensing pattern was indicative of</p> <p>9 diversion even for those with no pharmacy training,"</p> <p>10 and below that, it says, Subsection A, "Patients</p> <p>11 travel long distances from residence to reach</p> <p>12 prescriber or pharmacy," you reference "Attachment</p> <p>13 at Number 3."</p> <p>14 What are you -- what are you intending to</p> <p>15 refer to when you say "Attachment at Number 3"?</p> <p>16 A. So if you look at the preceding sentence,</p> <p>17 it says, "Here are some suggestions taken from the</p> <p>18 Quarles &amp; Brady presentation."</p> <p>19 So I was referencing a presentation that</p> <p>20 Quarles &amp; Brady had made and what Quarles &amp; Brady</p> <p>21 may have thought were red flags, and what they may</p> <p>22 have used in a presentation that they delivered</p> <p>23 defining or talking about red flags.</p> <p>24 Q. Okay. So the attachments -- would you</p> <p>25 agree with me that the attachments are intended to</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I see that, yes.</p> <p>2 Q. Okay.</p> <p>3 MR. ELSNER: I'm sorry, I'm not following</p> <p>4 you exactly.</p> <p>5 Are these attachments to the email from</p> <p>6 Robert --</p> <p>7 THE WITNESS: Giacalone.</p> <p>8 MR. ELSNER: -- Giacalone -- thank you --</p> <p>9 or are these attachments to Mr. Catizone's</p> <p>10 email?</p> <p>11 They don't appear to be attachments to his</p> <p>12 email. I'm just not following exactly.</p> <p>13 MS. MILLER: That's part of my question.</p> <p>14 MR. ELSNER: Okay.</p> <p>15 MS. MILLER: This is the way the documents</p> <p>16 were presented to us, so I don't know if</p> <p>17 that --</p> <p>18 MR. ELSNER: And what is the metadata?</p> <p>19 Does it say in the metadata?</p> <p>20 MS. MILLER: Sitting here today, I</p> <p>21 couldn't tell you that.</p> <p>22 MR. ELSNER: Okay. I didn't just -- I</p> <p>23 don't even recognize some of these Bates</p> <p>24 numbers.</p> <p>25 So I was curious, this MNKOI, do you know</p>
<p style="text-align: right;">Page 63</p> <p>1 be a reference for support for the red flag that</p> <p>2 you're identifying?</p> <p>3 A. I'm trouble -- I'm having trouble using</p> <p>4 the words "reference" and "support."</p> <p>5 I would say it was an example of red flags</p> <p>6 that others in pharmacy had used or talked about</p> <p>7 that we had also seen and talked about. But I'm not</p> <p>8 sure where the support was.</p> <p>9 But if somebody else talked about it, used</p> <p>10 it, and it was DEA support, then the answer was</p> <p>11 "yes."</p> <p>12 Q. All right. So the attachments to the</p> <p>13 email include the presentation that I had just</p> <p>14 referenced in Exhibit Number 5, and it's also an</p> <p>15 excerpt of that that is a presentation from</p> <p>16 Mr. Rannazzisi to the American Society of</p> <p>17 Interventional Pain Physicians on June 9th of 2012.</p> <p>18 It includes a page that's entitled</p> <p>19 21 C.F.R. 1306.04 regarding corresponding</p> <p>20 responsibility, correct?</p> <p>21 A. Yes, that slide is there.</p> <p>22 Q. Okay. And then it also has that page of</p> <p>23 potential red flags following that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you see that?</p>	<p style="text-align: right;">Page 65</p> <p>1 what case that is?</p> <p>2 MS. MILLER: I believe these are</p> <p>3 collected -- if you see at the bottom, the</p> <p>4 source industry documents, these are documents</p> <p>5 that were collected by the University of</p> <p>6 California San Francisco from all the industry</p> <p>7 documents produced in the litigation.</p> <p>8 MR. ELSNER: Okay. Do you know if these</p> <p>9 are in the productions in the MDL?</p> <p>10 MS. MILLER: My understanding is that</p> <p>11 these all came from the MDL.</p> <p>12 MR. ELSNER: Okay. I've just never seen</p> <p>13 that Bates number before, in seven or</p> <p>14 eight years so ...</p> <p>15 MS. MILLER: Yeah. That, I don't know for</p> <p>16 certain, other than that's my understanding, is</p> <p>17 that's the source of where these documents came</p> <p>18 from.</p> <p>19 MR. ELSNER: Okay.</p> <p>20 MS. MILLER: There were many documents</p> <p>21 produced before we were ever a part --</p> <p>22 MR. ELSNER: I understand.</p> <p>23 MS. MILLER: -- of the MDL, so we had to</p> <p>24 collect them anywhere we could find them.</p> <p>25 MR. ELSNER: I understand.</p>

<p style="text-align: right;">Page 66</p> <p>1 MS. MILLER: Okay. So appreciate that</p> <p>2 clarification.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. Do you know whether these documents were</p> <p>5 attached to your email or to Mr. Giacalone?</p> <p>6 A. Since they reflect a number of different</p> <p>7 presentations -- there's one from March, there's one</p> <p>8 from November -- I can't recall which ones I may</p> <p>9 have attached and which ones Mr. Giacalone may have</p> <p>10 also then attached back and forth.</p> <p>11 So I apologize, but I can't.</p> <p>12 Q. Okay. No problem. And I didn't mean</p> <p>13 to -- I didn't mean to represent to you that these</p> <p>14 were yours. I was more asking the questions than</p> <p>15 anything.</p> <p>16 A. I'm from Chicago. No harm taken.</p> <p>17 Q. Okay. So I am going to refer you to --</p> <p>18 well, back up.</p> <p>19 So, again, back on your email,</p> <p>20 February 17th, 2014, you mentioned these are</p> <p>21 suggestions taken from the Quarles &amp; Brady</p> <p>22 presentation.</p> <p>23 Do you know what presentation you're</p> <p>24 referring to there?</p> <p>25 A. That's why I'm a bit confused, because</p>	<p style="text-align: right;">Page 68</p> <p>1 group.</p> <p>2 It's either Fernandez or Hernandez, Roger.</p> <p>3 Q. Okay. And what -- what was the context of</p> <p>4 the presentations that Quarles &amp; Brady made? Who</p> <p>5 were they giving the presentation to?</p> <p>6 A. I don't recall. Quarles &amp; Brady has a</p> <p>7 number of cases before state boards of pharmacy, and</p> <p>8 they also provide guidance and information to state</p> <p>9 boards of pharmacy.</p> <p>10 So I'm not sure who they were representing</p> <p>11 or what the audience was or what the presentation</p> <p>12 was intended for.</p> <p>13 Roger Morris, I'm sorry. It's</p> <p>14 Roger Morris.</p> <p>15 Q. Morris. Okay, great.</p> <p>16 The presentation that they gave, was it</p> <p>17 focused on identification of red flags? Was that</p> <p>18 the intent of the presentation?</p> <p>19 A. Again, I can't recall. I may not even</p> <p>20 have been present there, but we may have received</p> <p>21 the presentation. So I can't recall.</p> <p>22 Q. Okay. The red -- the red flags that you</p> <p>23 have identified in your email of February 7, 2014,</p> <p>24 do you agree that these represent categories of red</p> <p>25 flags that you had -- I guess, you have recognized</p>
<p style="text-align: right;">Page 67</p> <p>1 Quarles &amp; Brady gave several presentations. And</p> <p>2 these documents don't have any of the markings or</p> <p>3 listings from Quarles &amp; Brady.</p> <p>4 Q. Okay.</p> <p>5 A. So that's why I can't confirm that I sent</p> <p>6 these. I would have sent Quarles &amp; Brady slides,</p> <p>7 not these slides. So that's where I'm confused.</p> <p>8 Q. Okay. Okay. So these may be attachments</p> <p>9 that Mr. Giacalone sent to you?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 A. I can't recall.</p> <p>13 Q. Actually, and I take that -- and now that</p> <p>14 I'm looking at the cover email, he -- on the first</p> <p>15 page, February 20th, 2014, he says, "I pulled some</p> <p>16 past DEA presentations and looked at what DEA</p> <p>17 identified as pharmacy red flags and added those."</p> <p>18 So these are probably him sending to you?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So the presentations that were made</p> <p>21 by Quarles &amp; Brady, who at Quarles &amp; Brady made</p> <p>22 those presentations, do you recall?</p> <p>23 A. They have a pharmacy team of lawyers, but</p> <p>24 it might have been Roger, and I can't recall his</p> <p>25 last name. But he's the principal of the pharmacy</p>	<p style="text-align: right;">Page 69</p> <p>1 as categories of red flags in 2014?</p> <p>2 A. Not as categories.</p> <p>3 Q. Okay. That was a poor choice of words.</p> <p>4 Would the red flags that you have outlined</p> <p>5 in your email of February 17th, do you agree that</p> <p>6 each of these items are red flags as you recognized</p> <p>7 them in 2014?</p> <p>8 MR. ELSNER: Objection.</p> <p>9 THE WITNESS: I listed them as red flags,</p> <p>10 so I would say that that would be what I would</p> <p>11 have called them.</p> <p>12 BY MS. MILLER:</p> <p>13 Q. Okay. The first attachment to this email</p> <p>14 references "Draft Number 2, Pharmacist Red Flags,</p> <p>15 Combined List and DEA."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. It appeared to me that this was the</p> <p>19 list, the draft of the list that was put together</p> <p>20 using both your input and Mr. Giacalone's --</p> <p>21 Giacalone's input for potential inclusion into the</p> <p>22 red flag video; is that correct?</p> <p>23 A. My recall --</p> <p>24 MR. ELSNER: Objection.</p> <p>25 THE WITNESS: -- would be this would</p>

<p style="text-align: right;">Page 70</p> <p>1 Mr. Giacalone's list. And I could tell that by</p> <p>2 the type font.</p> <p>3 When I was at NABP, our editors required</p> <p>4 us to use Times Roman for everything we did,</p> <p>5 and this is not that font. So it would have</p> <p>6 been Mr. Giacalone's.</p> <p>7 BY MS. MILLER:</p> <p>8 Q. Okay. So looking at his first email or</p> <p>9 his email on the first page dated February 20, 2014,</p> <p>10 he's emailing you.</p> <p>11 It says, "In light of our meeting next</p> <p>12 Tuesday, I took a shot at combining our two lists of</p> <p>13 pharmacy red flags and prioritizing them. See the</p> <p>14 attached."</p> <p>15 Does this -- does this reflect a</p> <p>16 combination between the red flags you suggested and</p> <p>17 then the red flags he is suggesting?</p> <p>18 A. It was a combination that he suggested.</p> <p>19 I'm not sure -- I'd like to have seen my original</p> <p>20 list to see what he included and what he didn't</p> <p>21 include, but it was his compromised list, yes.</p> <p>22 Q. Okay. And ultimately, this work product</p> <p>23 turned into a video that was presented by NABP</p> <p>24 regarding identification of red flags; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 It also resulted in the production of</p> <p>2 what's been referred to as the "Stakeholders'</p> <p>3 Challenges and Red Flag Warning Signs Related to</p> <p>4 Prescribing and Dispensing Controlled Substances,"</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Starting -- keeping with the video for the</p> <p>8 moment, who -- who was the video presented to?</p> <p>9 A. I could tell what you we did, but I don't</p> <p>10 know who the audience was.</p> <p>11 What we did is, at our subsequent annual</p> <p>12 meeting of the National Association of Boards of</p> <p>13 Pharmacy, we invited each executive director of the</p> <p>14 Boards of Pharmacy to tape an introduction to the</p> <p>15 video, so they could use that in their states to</p> <p>16 show to whoever they thought important, to post on</p> <p>17 their websites, and then also for industry groups to</p> <p>18 also use it for their members as well.</p> <p>19 But I don't know who actually saw it or</p> <p>20 who actually received it.</p> <p>21 MS. MILLER: We've been going for actually</p> <p>22 an hour and a half. Do you want to take a</p> <p>23 five-minute break?</p> <p>24 THE WITNESS: I'm still good.</p> <p>25 MS. MILLER: Okay. Are you guys okay?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And that was presented in 2014; is</p> <p>3 that correct?</p> <p>4 A. It was released in 2014, yes.</p> <p>5 Q. What was the purpose of that video?</p> <p>6 A. The American Medical Association and some</p> <p>7 physician groups got into a dispute with Walgreens</p> <p>8 and Walgreens pharmacists, because Walgreens</p> <p>9 pharmacists were challenging controlled substance</p> <p>10 prescriptions. And the AMA said a pharmacist should</p> <p>11 simply fill what they're given and should do no</p> <p>12 checks, no verification, and not have any input into</p> <p>13 the prescription whatsoever.</p> <p>14 We were asked to mediate that dispute</p> <p>15 between the pharmacies and medicine, and so we</p> <p>16 convened a task force. And the task force</p> <p>17 identified the issues that were the most irritating</p> <p>18 and the most dangerous to patient communications</p> <p>19 between prescribers and pharmacists.</p> <p>20 And as a result of that task force, we</p> <p>21 identified key issues that should be in the video</p> <p>22 that would help physicians and pharmacists better</p> <p>23 communicate when confronted with these situations.</p> <p>24 Q. So that resulted in the production of this</p> <p>25 video.</p>	<p style="text-align: right;">Page 73</p> <p>1 All right. I'll keep going. Let me know</p> <p>2 any time if you need to take a break.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. Prior to the release of this video in</p> <p>5 2014, to your knowledge, had the NABP released any</p> <p>6 other guidance documents or information pertaining</p> <p>7 to the identification of red flags?</p> <p>8 A. I'm sure we did, but I don't recall</p> <p>9 specific documents.</p> <p>10 Q. You had -- we had previously talked about</p> <p>11 different references and industry guidance that</p> <p>12 informed the pharmacy standard of care.</p> <p>13 Would this video be one of those items of</p> <p>14 industry guidance that, in your opinion, informed</p> <p>15 the pharmacy standard of care with respect to</p> <p>16 controlled substance dispensing?</p> <p>17 A. Yes.</p> <p>18 Q. Is it your opinion that this video</p> <p>19 provided useful guidance to pharmacists to detect</p> <p>20 and resolve red flags?</p> <p>21 A. I hope so. Yes.</p> <p>22 Q. Was it reasonable for pharmacies to use</p> <p>23 this video as an educational tool for its</p> <p>24 pharmacists regarding red flags?</p> <p>25 A. As one of the tools, yes.</p>



<p style="text-align: right;">Page 74</p> <p>1 Q. Back on Exhibit 6, looking at the list, 2 the draft list of pharmacist red flags that was 3 attached to the email chain, do you recall whether 4 you had any disagreement with any of the red flags, 5 as they were stated, as listed here? 6 A. Excuse me. 7 I would say anything that didn't make the 8 video is probably where there was a disagreement, or 9 we decided it wouldn't be included. 10 Q. Just because one of these didn't make the 11 video, would that be an indication that there was 12 disagreement over it? 13 Or is it possible it was not -- just not 14 prioritized for the video? 15 A. The latter, not prioritized for the video. 16 Q. Okay. So my question is, specifically, do 17 you recall whether you had any disagreement with any 18 of the red flags as listed in this document? 19 A. I can't recall, but I don't believe so. 20 Q. Okay. 21 (Exhibit 7 was marked for 22 identification.) 23 MS. MILLER: I hand you what I've marked 24 as Exhibit 7. I just scribbled out my note 25 that came through on a copy, because I don't</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I was the final editor. 2 Q. With respect to -- so the document 3 outlines some of the challenges and then identifies 4 issues for -- and starting on Page 4 for 5 Manufacturers; Page 5, Distributors; Page 6, 6 Prescribers/Physicians; and then Page 8, 7 Pharmacists, correct? 8 A. Correct. 9 Q. And then it identifies some challenges for 10 pharmacists with respect to dispensing controlled 11 substance prescriptions, correct? 12 A. Correct. 13 Q. And then it moves to -- starting on 14 Page 10, it identifies what the group has identified 15 as potential red flags, correct? 16 A. Correct. 17 Q. And those red flags, specific for 18 pharmacies, begins on Page 13? 19 A. The red flags related to the purpose of 20 the document, yes. 21 Q. Can you -- can you explain for me what you 22 mean by that? 23 A. Sure. If you go to Page 1 in the 24 Executive Summary -- 25 Q. Yeah.</p>
<p style="text-align: right;">Page 75</p> <p>1 want that in the record. 2 BY MS. MILLER: 3 Q. Okay. So Exhibit 7 is a copy of the 4 document we had just briefly mentioned a moment ago, 5 the Stakeholders' Challenges and Red Flag Warning 6 Signs Related to Prescribing and Dispensing 7 Controlled Substances, correct? 8 A. Yes. 9 Q. Okay. Are you familiar with this 10 document? 11 A. Yes, I am. 12 Q. Okay. Can you describe for me what the 13 purpose of this document was? 14 A. As mentioned earlier, it was to foster 15 communication between prescribers and pharmacists 16 regarding the challenges and red flags related to 17 controlled substances, and then provide guidance to 18 pharmacists and prescribers as to identifying the 19 problem, and some ways to actually address the 20 problem, and to hopefully work together on those 21 challenges. 22 Q. Okay. Were you -- were you personally 23 involved in the creation of this document? 24 A. Yes. 25 Q. Okay. And in what way?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. -- the last paragraph, "In sum, the goal 2 of the stakeholder consensus document is to provide 3 healthcare practitioners with an understanding of 4 their shared responsibility to ensure that all 5 controlled substances are prescribed and dispensed 6 for a legitimate medical purpose as well as 7 providing guidance on which red flag warning lines 8 warrant further scrutiny." 9 And the rest of the paragraph continues 10 that outlines what really they were intended for. 11 Q. Okay. Got it. So when we go to Page 13 12 under the Pharmacist section, was this section 13 intended to be guidance as to on which red flag 14 warning signs warranted further scrutiny by the 15 pharmacist? 16 A. Some of the red flags, yes. 17 Q. When you say "some of the red flags," are 18 you stating that this is -- that there are 19 additional red flags that were -- have been known 20 and identified that were not contained within this 21 document? 22 A. Yes. 23 Q. Okay. Why were those red flags not 24 contained within those documents? 25 A. The main purpose was those red flags may</p>

<p style="text-align: right;">Page 78</p> <p>1 have been more wholly held by an individual group.  2 So the pharmacist red flags that would involve  3 dispensing data, the physicians, manufacturers, and  4 others wouldn't have those data.  5 So this was looking at the red flags that  6 had some commonality across all of the consensus  7 stakeholder groups.  8 Q. If the document was looking for  9 commonality across all the stakeholders' groups, why  10 was there a separate section for prescribers' red  11 flags on Page 11 and 12 versus pharmacists' red  12 flags on Page 13 and 14?  13 A. Sure. If you look, the title of the  14 document is a consensus. To achieve consensus  15 between those various stakeholder groups is  16 impossible, almost.  17 How the document was prepared is, each  18 group, after meeting several times, was asked to  19 identify from their perspective the red flags that  20 the group agreed upon, so that, as a physician,  21 seeing a red flag that the pharmacist may have  22 alerted the physician to, the pharmacist was  23 sensitive to what that physician was seeing.  24 And similarly, the pharmacy wanted to  25 present back to physicians the red flags they were</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MS. MILLER:  2 Q. I had -- I had written down the date of  3 July 2016 on this document, but I don't see a  4 document on this date.  5 Do you know when this document came out?  6 A. It would have been 2014.  7 Q. 2014?  8 A. Right.  9 Q. That's what I thought.  10 (Exhibit 8 was marked for  11 identification.)  12 THE WITNESS: Thank you.  13 MS. MILLER: I've handed you what I've  14 marked as Exhibit 8 to your deposition.  15 BY MS. MILLER:  16 Q. This is a copy of a PowerPoint  17 presentation that was given by Ruth Carter at the  18 Pharmacy Diversion Awareness Conference in  19 Albuquerque, New Mexico, on March 2nd and 3rd, 2013.  20 Do you see that?  21 A. Yes.  22 Q. Do you know who Ruth Carter is?  23 A. Yes.  24 Q. Who was she?  25 A. She was the regulatory section</p>
<p style="text-align: right;">Page 79</p> <p>1 seeing so that there would be a way to work together  2 on red flags that intersected both practices.  3 Q. Okay. To your recollection, under the  4 Pharmacists section of red flags, were there red  5 flags that the pharmacy group had considered  6 including in this document but did not include?  7 A. I can't say because, again, each section,  8 if you look at the first page, the American  9 Pharmacists Association, the American Society of  10 Health-System Pharmacists, the national -- the  11 National Association of Chain Drug Stores, National  12 Community Pharmacists, Pharmaceutical Care  13 Management Association, Rite Aid and Walgreens and  14 CVS Health, would have the group, smaller group that  15 worked on it and came to a consensus.  16 NABP wasn't involved in that discussion.  17 Q. Okay. Would it have been reasonable for a  18 pharmacy to rely on information that was presented  19 in this document?  20 MR. ELSNER: Objection.  21 THE WITNESS: I think the information was  22 educational. And the pharmacy could use that  23 information as it pertained to the practice and  24 it pertained to enhancing their knowledge in  25 their practice.</p>	<p style="text-align: right;">Page 81</p> <p>1 import/export unit chief.  2 Q. With what organization?  3 A. The DEA.  4 Q. Okay. Are you familiar with this  5 presentation?  6 A. I probably have seen it, but I haven't  7 seen it in a long time.  8 Q. Okay. Would this be one of the  9 presentations that you had referenced earlier that  10 the DEA had given to industry regarding the  11 identification and resolution of red flags?  12 A. Yes, and it was also attached in your  13 Exhibit 6 as well.  14 Q. Looking through this document, would this  15 have been a reasonable source of information upon  16 which pharmacies could rely with respect to the  17 identification of red flags?  18 A. Part of the reasonable information, yes.  19 Q. Okay. Would you agree with me that this  20 document reflects what Ruth Carter was communicating  21 to the pharmacy industry regarding what she had  22 identified as common red flags?  23 A. Some of the common red flags, I believe,  24 yes.  25</p>



<p style="text-align: right;">Page 82</p> <p>1 (Exhibit 9 was marked for 2 identification.) 3 MS. MILLER: I hand you what I've marked 4 as Exhibit 9. 5 BY MS. MILLER: 6 Q. Exhibit 9 is a copy of the Texas 7 Administrative Code for the Texas State Board of 8 Pharmacy Rule Section 291.29 entitled "Professional 9 Responsibility of Pharmacists." 10 Do you see that? 11 A. I see that, yes. 12 Q. Okay. In my understanding from your 13 report, this is the regulation in which the Texas 14 Board of Pharmacy has outlined what it considered 15 controlled substance prescription red flags? 16 A. Could you -- do you have a page in my 17 report so I can just make sure? 18 Q. I think it was 55, but let me see. 19 A. 5-5? 20 Q. 53 to 55. 21 A. That -- okay. Yes. 22 Q. Okay. Specifically, the identification of 23 red flags in this document starts at Subsection (f), 24 correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 State Board of Pharmacy for pharmacies with respect 2 to controlled substance dispensing? 3 A. The hesitation, I'm not sure how Texas 4 classified it, if it was a guidance document or how 5 Texas enforced it. 6 But overall, I would say it probably was a 7 guidance document. 8 Q. Okay. Do you have any knowledge or 9 understanding as to how the Texas State Board of 10 Pharmacy used this document? 11 A. I do not. 12 Q. Okay. In your opinion, was it reasonable 13 for pharmacies to refer to these documents with 14 respect to determining what constitutes red flags 15 within the State of Texas? 16 A. As part of the information it references, 17 yes. 18 Q. I'm not sure I understood your answer. 19 "As part of the information it references," can you 20 explain what you mean by that? 21 A. Sure. These were some of the guidance 22 documents. They should also look to federal law, 23 also look to what standards of practice were, and 24 then also look at their own dispensing patterns, 25 data, prescribers. All of that information needed</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. And you have -- you have outlined within 2 your report what red flags were outlined in this 3 rule as well, correct? 4 A. Yes, some of those. I didn't mention all 5 of them. 6 Q. Okay. So Exhibit 9 under Subsection (f) 7 is the complete list of red flags identified in the 8 Texas Board of Pharmacy regulations? 9 A. Yes. 10 (Exhibit 10 was marked for 11 identification.) 12 MS. MILLER: I hand you what I've marked 13 as Exhibit 10. 14 BY MS. MILLER: 15 Q. Exhibit 10 is a document entitled "Texas 16 State Board of Pharmacy 'Red Flags' Checklist for 17 Pharmacies, You Might Be A Pill Mill If ..." 18 Correct? 19 A. Yes. 20 Q. And this is the document you referenced in 21 your report that was issued in February of 2018, 22 correct? 23 A. Correct. 24 Q. Okay. Is your understanding that this is 25 a guidance document that was issued by the Texas</p>	<p style="text-align: right;">Page 85</p> <p>1 to be taken in context. 2 Q. We've gone through a number of different 3 documents that have outlined different iterations of 4 red flags that were published within the industry, 5 correct? 6 A. Yes. 7 Q. All right. And there are some others 8 which I have with me. We can go through them. But 9 for the sake of time, I won't necessarily go through 10 them unless we need to. 11 Would you agree with me that within all 12 these documents that have been published in the 13 industry or presentations that were given in the 14 industry, that there are some differences between 15 these different documents and the red flags that 16 they have identified? 17 A. Differences but not intent or substance, 18 yes. 19 Q. Okay. Would you agree with me that the 20 red flags that have been identified within the 21 industry have evolved over time? 22 MR. ELSNER: Objection. 23 THE WITNESS: I don't know what "evolved" 24 means. 25 I think some of the red flags have always</p>

<p style="text-align: right;">Page 86</p> <p>1    been present. And then as new diversionary</p> <p>2    trends have developed, those have been</p> <p>3    identified as well.</p> <p>4    BY MS. MILLER:</p> <p>5    Q.   Okay. So there have been additional red</p> <p>6    flags that have been identified, generally, as</p> <p>7    recognized within the industry, as they have</p> <p>8    evolved?</p> <p>9    A.   Nuances of the red flags. And the</p> <p>10   explanation would be there was always a red flag</p> <p>11   concerning combination products and what those</p> <p>12   combinations could be.</p> <p>13       If new drugs came on the market or other</p> <p>14   drugs were being abused, that became a new nuance of</p> <p>15   the basic red flag. But it didn't change the</p> <p>16   overall concern that you should never -- you should</p> <p>17   exercise caution in dispensing certain combination</p> <p>18   products or abuse -- products of abuse.</p> <p>19   Q.   Would you agree with me, when we look back</p> <p>20   to the older documents, starting with the DEA</p> <p>21   Pharmacist's Guide to Prescription Fraud, when they</p> <p>22   identify a list of -- one, two, three, four, five --</p> <p>23   six red flags, it's referencing some general</p> <p>24   concepts in red flags, correct?</p> <p>25   A.   Which exhibit? 4, Exhibit 4?</p>	<p style="text-align: right;">Page 88</p> <p>1    Q.   Okay.</p> <p>2    A.   The agreement is there are not specific</p> <p>3    numbers.</p> <p>4       But the disagreement is the references in</p> <p>5    DEA always go back to the standards of practice.</p> <p>6    And for controlled substances, there is a maximum</p> <p>7    quantity that pharmacists can prescribe, a dosing</p> <p>8    regimen.</p> <p>9       So the DEA would reference back, say,</p> <p>10   anything above that dosing regimen becomes high.</p> <p>11   They didn't give specific, but they said you have to</p> <p>12   look back at the standards of care and reference</p> <p>13   back that.</p> <p>14       That would be my understanding of the</p> <p>15   document.</p> <p>16   Q.   Okay. And where would I find that</p> <p>17   document where the DEA expressed those dosing limits</p> <p>18   and what the standard of care was?</p> <p>19   A.   I think it would be the interpretation of</p> <p>20   the C.F.R., the Controlled Substance Act and various</p> <p>21   standards of care. There's not a specific document</p> <p>22   that made that statement, but it would be an</p> <p>23   understanding that I, as a pharmacist, would have.</p> <p>24   Q.   How would you have that understanding as a</p> <p>25   pharmacist without a document from the DEA to tell</p>
<p style="text-align: right;">Page 87</p> <p>1    Q.   I forget. Yes. I forgot to write it</p> <p>2    down.</p> <p>3    A.   Again, I can't say categorically. I would</p> <p>4    say these are some examples of red flags that were</p> <p>5    becoming -- that DEA had been made aware of to issue</p> <p>6    the guidance.</p> <p>7    Q.   Correct. And the recitation of the red</p> <p>8    flags identify a general concept of the -- of the</p> <p>9    red flag, right?</p> <p>10       When the DEA is referencing, you know,</p> <p>11   "The prescriber writes significantly more</p> <p>12   prescriptions (or in larger quantities) compared to</p> <p>13   other practitioners in your area," correct, it's not</p> <p>14   providing specific information as to what</p> <p>15   constitutes a "large quantity," correct?</p> <p>16       MR. ELSNER: Objection.</p> <p>17       THE WITNESS: It's not giving the specific</p> <p>18   numbers. No, it's not giving specific numbers.</p> <p>19   BY MS. MILLER:</p> <p>20   Q.   So that's what I mean by, you know, in a</p> <p>21   document like this, it's presenting general concepts</p> <p>22   but not specific parameters, by which pharmacists</p> <p>23   need to -- or should be identifying this as a red</p> <p>24   flag?</p> <p>25   A.   I would agree and disagree.</p>	<p style="text-align: right;">Page 89</p> <p>1    you what their expectations were?</p> <p>2       MR. ELSNER: Objection. You can answer.</p> <p>3       THE WITNESS: As a pharmacist, any time a</p> <p>4    prescription was issued above what the</p> <p>5    recommended dosage range was, which was set by</p> <p>6    the FDA based on safety and efficacy, I would</p> <p>7    know that above that dose, that would be</p> <p>8    problematic. And I would need to analyze.</p> <p>9       And with controlled substances, the DEA</p> <p>10   had repeatedly say, watch for prescribers -- in</p> <p>11   this first bullet -- that write more or larger</p> <p>12   quantities.</p> <p>13       So anything above that would be just a</p> <p>14   standard of care, basic pharmacy concept the</p> <p>15   pharmacist should know.</p> <p>16   BY MS. MILLER:</p> <p>17   Q.   Okay. So the pharmacist should be looking</p> <p>18   to the recommended dosage that was issued by FDA as</p> <p>19   determining whether -- whether an amount is a large</p> <p>20   quantity for that particular drug?</p> <p>21   A.   Correct. And also, as it said,</p> <p>22   "practitioners in your area." And that would be</p> <p>23   data that the pharmacist probably doesn't have.</p> <p>24   That would have to come from the corporation.</p> <p>25   Q.   That reference to "practitioners in your</p>

<p style="text-align: right;">Page 90</p> <p>1 area compared to" -- so the reference is "Prescriber 2 writes significantly more prescriptions compared to 3 other practitioners in your area," or in larger 4 quantities compared to other practitioners in your 5 area. 6 Would you agree with me that the 7 evaluation of the quantities that prescribers -- the 8 quantities of controlled substances that prescribers 9 in the area are prescribing is a relative analysis, 10 right? It's not a fixed analysis? 11 This is presenting a comparison to what 12 prescribers are prescribing in your area. 13 MR. ELSNER: Objection. 14 You can answer. 15 THE WITNESS: If I walk through it as a 16 pharmacist, so if I have a prescriber that 17 routinely -- I look at prescribers in my 18 patient area, and there are prescribers that 19 are routinely prescribing for what the 20 recommended dosage is, and then I have a 21 prescriber that's prescribing above that 22 repeatedly, I guess that would be my 23 comparison. 24 But it would be relative to the other 25 practitioners but also based upon what is</p>	<p style="text-align: right;">Page 92</p> <p>1 THE WITNESS: I believe so. But I'm not 2 fully understanding, but I believe so. 3 BY MS. MILLER: 4 Q. Okay. Should pharmacists be considering 5 what the generally accepted medical standard of care 6 is for prescribing of controlled substances at a 7 particular time? 8 A. I would say yes. And maybe, perhaps, in 9 the context of, if I have a family practitioner 10 that's prescribing pain management versus a pain 11 management specialist, you know, I would look at the 12 standard of care there. 13 But in terms of the general knowledge, the 14 pharmacist may have general knowledge of what that 15 standard of care may be. 16 Q. Okay. Would you agree with me that the 17 standard of care within the medical community with 18 respect to prescribing of controlled substances for 19 pain has changed over time? 20 MR. ELSNER: Objection. 21 THE WITNESS: The prescribing and 22 recommended prescribing hasn't changed, but the 23 philosophy of pain management, I would agree, 24 has changed. 25</p>
<p style="text-align: right;">Page 91</p> <p>1 recommended and what is the standard of care 2 that should be issued for that medication. 3 BY MS. MILLER: 4 Q. And would you agree with me that the 5 standard of care for medical prescribing at any 6 particular time is relevant to the pharmacist's 7 consideration as to whether a particular 8 prescription is a red flag? 9 MR. ELSNER: Objection. 10 THE WITNESS: Can you help me on that? 11 BY MS. MILLER: 12 Q. Sure. So we're talking about how this can 13 be a relative analysis, that the pharmacist should 14 be comparing a prescription compared to what other 15 prescribers in the area are prescribing, correct? 16 A. With the basis that there is an objective 17 point that the pharmacist must base their comparison 18 on, yes. 19 Q. Okay. And that's provided by the FDA? 20 A. Correct. 21 Q. Okay. Would you agree me that the 22 standard of care within the medical community for 23 prescribing of controlled substances is also a 24 relevant informational point for pharmacists? 25 MR. ELSNER: Objection.</p>	<p style="text-align: right;">Page 93</p> <p>1 BY MS. MILLER: 2 Q. And that philosophy has been represented 3 in documents presented to the industry, such as the 4 CDC prescribing guidelines, correct? 5 A. Not the CD -- I don't agree it would be 6 the CDC guidelines. I think the CDC guidelines was 7 based upon doses and what the recommended doses 8 would be for safety. 9 I think the documents maybe you're 10 referring to is when people said pain is one of the 11 fifth treatment elements, and people were 12 disregarding what those CDC guidelines or what 13 recommended doses were. 14 That's what I was referring to the 15 philosophy has changed. 16 Q. Okay. Understood. I'm referring 17 specifically to guidelines that were available to 18 prescribers in the healthcare industry with respect 19 to dosing or prescribing controlled substances for 20 the use of -- for the treatment of pain. 21 A. Uh-huh. 22 Q. Okay. Would you agree with me that those 23 guidelines have changed over time? 24 A. The CDC documents did change somewhat over 25 time, yes.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. Okay. Would you agree with me that</p> <p>2 guidelines issued by the Federation of State Medical</p> <p>3 Boards has changed over time?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree with me that guidelines by</p> <p>6 the American Medical Association have changed over</p> <p>7 time?</p> <p>8 A. That one, I can't comment, because I'm not</p> <p>9 as familiar with their documents, but I would</p> <p>10 probably say, yes, they have.</p> <p>11 Q. Okay. So to circle back on that, would</p> <p>12 you agree with me that what the generally accepted</p> <p>13 standard of care for prescribing of controlled</p> <p>14 substances at a particular time is relevant to the</p> <p>15 pharmacist's assessment of whether a controlled</p> <p>16 substance prescription presents a red flag?</p> <p>17 A. I would say the pharmacy standards of care</p> <p>18 and the laws are relevant. Some of the other</p> <p>19 standards of care for physicians or other groups may</p> <p>20 not be as relevant.</p> <p>21 Q. Okay. Wouldn't it be important for a</p> <p>22 pharmacist to understand whether prescriptions fall</p> <p>23 within the generally accepted medical standard of</p> <p>24 care?</p> <p>25 MR. ELSNER: Objection.</p>	<p style="text-align: right;">Page 96</p> <p>1 use in his expert work, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So this is an excerpt of his report</p> <p>4 of the red flags that he used, and I just am</p> <p>5 attaching it here because it's an easier list to</p> <p>6 refer to.</p> <p>7 A. Do you need the highlighted copy?</p> <p>8 Q. Oh, did I give you the highlighted?</p> <p>9 A. Yeah.</p> <p>10 Q. Yeah, I mean, they're just highlights. It</p> <p>11 doesn't really matter but --</p> <p>12 A. I saw the secret answers, so I didn't --</p> <p>13 Q. Yeah. The -- thank you.</p> <p>14 It was just -- it's a shorter recitation</p> <p>15 of those red flags without additional text between</p> <p>16 them, so it was easier for me to refer to them.</p> <p>17 Is that fair?</p> <p>18 A. Okay.</p> <p>19 Q. So this list, does this list reflect the</p> <p>20 red flags that you identified for evaluation in this</p> <p>21 case?</p> <p>22 A. Can I take a few minutes to --</p> <p>23 Q. Absolutely.</p> <p>24 A. Thank you.</p> <p>25 Yes, yes, they are.</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: I would say they would be --</p> <p>2 should be knowledgeable about whether it fell</p> <p>3 within the standards of care, yes.</p> <p>4 MS. MILLER: Okay. It's 10:25. Let's</p> <p>5 take a quick break.</p> <p>6 THE VIDEOGRAPHER: Off the record at</p> <p>7 10:25.</p> <p>8 (Whereupon, a recess was taken</p> <p>9 from 10:25 a.m. to 10:37 a.m.)</p> <p>10 THE VIDEOGRAPHER: Back on the record at</p> <p>11 10:37.</p> <p>12 (Exhibit 11 was marked for</p> <p>13 identification.)</p> <p>14 BY MS. MILLER:</p> <p>15 Q. So in your report, you have outlined a set</p> <p>16 of red flags upon which you have --</p> <p>17 A. Thank you.</p> <p>18 Q. -- evaluated Albertsons' dispensing in</p> <p>19 Tarrant County.</p> <p>20 Those red flags are outlined in your</p> <p>21 report, but then I've also handed you what I've</p> <p>22 marked as Exhibit 11, which is an excerpt from the</p> <p>23 report of Craig McCann.</p> <p>24 And do I understand correctly that you</p> <p>25 provided your list of red flags to Mr. McCann for</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. And you provided this list of red</p> <p>2 flags to Mr. McCann, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And what -- what did you ask</p> <p>5 Mr. McCann to do with respect to those red flags?</p> <p>6 A. To analyze the dispensing data to see how</p> <p>7 many of the prescriptions would fall into the red</p> <p>8 flag categories.</p> <p>9 Q. Okay. Did you review Dr. McCann's expert</p> <p>10 report in this case?</p> <p>11 A. I have.</p> <p>12 Q. Okay. So looking at these red flags, as I</p> <p>13 mentioned, the red flags that we have gone through</p> <p>14 already this morning that were published as guidance</p> <p>15 within the industry, would you agree with me that</p> <p>16 those red flags -- and feel free to look through</p> <p>17 them and compare, if you wish.</p> <p>18 But those red flags, as they're stated in</p> <p>19 the industry guidance, are a little bit different</p> <p>20 than the way you've stated some of the red flags in</p> <p>21 your report?</p> <p>22 A. Not different. The red flags in my report</p> <p>23 and the red flags that are also mentioned in the</p> <p>24 other documents are the same.</p> <p>25 There may be some red flags that are not</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 included in my report that may be mentioned or not 2 mentioned in the other document. 3 Q. Okay. While you agree with me that the 4 concept of the red flags are the same, there are 5 some differences in the way that you have written 6 the red flags. 7 So if you look at Red Flag Number 1 on 8 Exhibit 11, this is your red flag, which states, "An 9 opioid was dispensed to a patient who traveled more 10 than 25 miles to visit the pharmacy. The distance 11 here is calculated from the center of the patient's 12 ZIP code to the center of the pharmacy ZIP code." 13 Do you see that? 14 A. Yes. 15 Q. Okay. In the red flags that we've gone 16 through in industry guidance, none of those red 17 flags -- although the red flags may state that 18 distance is a factor, they don't identify 25 miles 19 as the limit for which that red flag is triggered, 20 correct? 21 A. Correct. 22 Q. Okay. And as I understand your testimony 23 previously, you identified 25 miles as a limit based 24 on your review of telehealth rules, correct? 25 A. Telehealth rules and -- yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 neighboring county, that potentially could be 2 flagged under this, if the center of the ZIP code to 3 the center of the ZIP code is more than 25 miles? 4 A. Conceptually, yes. 5 Q. You had referenced in your report, Page 62 6 of your report, you have provided -- the section is 7 entitled Notice to Chain Pharmacy Albertsons from 8 DEA Investigations and Suspensions. 9 You've listed a number of DEA activity, 10 not only regarding Albertsons, but Walgreens and 11 Walmart. And on Page 62 to 63, you talk about 12 settlements that CVS and Walgreens and Walmart have 13 entered into with respect to opioid dispensing 14 claims, correct? 15 A. Correct. 16 Q. Okay. And you reference that the 17 settlements resulted in injunctive relief, and that 18 there's an injunctive order that was entered in the 19 Track 3 trial, the Ohio trial within the MDL, 20 correct? 21 A. Yes. 22 Q. Okay. And you describe that injunctive 23 relief, and noted that the injunctive order is 24 similar to the injunctive relief that was entered as 25 part of those settlements with Walgreens, Walmart,</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. Would you agree with me that the 2 identification of 25 miles as the trigger for the 3 red flag could be a question of professional 4 judgment of the pharmacist based on that pharmacy's 5 circumstances and surroundings? 6 A. Yes. 7 MR. ELSNER: Objection. 8 THE WITNESS: Yes. 9 BY MS. MILLER: 10 Q. "Yes," you would agree with that? 11 Is that "yes"? 12 A. Yes. 13 Q. Would you agree with me, by doing the 14 measurement of center of the ZIP code to center of 15 the ZIP code, that this would capture patients who 16 live less than 25 miles from the pharmacy itself? 17 MR. ELSNER: Objection. 18 THE WITNESS: That one, I would just say 19 from a common-sense point, but I didn't do the 20 analysis. And possibly so, but I don't know 21 for certain. 22 BY MS. MILLER: 23 Q. Okay. But just from -- conceptually, if a 24 patient lived on the eastern edge of a county and 25 the pharmacy was on the western edge of the</p>	<p style="text-align: right;">Page 101</p> <p>1 and CVS? 2 A. And what page again? 3 Q. I'm at 63 into 64, yeah. 4 A. So the last paragraph that you're 5 referring to? 6 Q. Starting at 63, you write, "... Florida 7 Attorney General brought civil actions against CVS 8 and Walgreens." 9 Then you reference lawsuits, Walmart, CVS, 10 and Walgreens. They entered into settlements with 11 the Florida Attorney General that contained several 12 proactive diversion protection policies. 13 Do you see that? 14 A. I see that, yes, I do. 15 Q. And then, "In the MDL, the court entered a 16 judgment and injunctive order against Walmart, CVS, 17 and Walgreens implementing certain diversion 18 policies as well"? 19 A. Yes. 20 Q. Were you -- are you familiar with those 21 diversion policies in the injunctive relief 22 agreements and the injunctive order? 23 A. No. 24 Q. Okay. 25 A. Except for what's in my report here and my</p>



<p style="text-align: right;">Page 102</p> <p>1 review of that, but I wasn't involved in the 2 creation or issuance of those. 3 Q. Okay. But you reviewed them in preparing 4 your report, correct? 5 A. Correct. 6 Q. With respect to the settlement agreements, 7 do you have any understanding as to who has entered 8 into those settlement agreements with Walgreens, 9 Walmart, and CVS? 10 A. I have no idea. 11 (Exhibit 12 was marked for 12 identification.) 13 THE WITNESS: Thank you. 14 MS. MILLER: I've handed you what I've 15 marked as Exhibit 12. 16 BY MS. MILLER: 17 Q. This is a chart that I will represent to 18 you that we pulled from the website on the bottom of 19 this document, NationalOpioidSettlement.com. And it 20 purports to reflect what states have entered into 21 the national settlements between -- and particularly 22 of interest here -- CVS, Walgreens, and Walmart. 23 Do you see that? 24 A. I see that, yes. 25 Q. Okay. And do you see that it makes</p>	<p style="text-align: right;">Page 104</p> <p>1 (Exhibit 13 was marked for 2 identification.) 3 MR. ELSNER: This is -- I'm sorry, what 4 exhibit are we on? 5 MS. MILLER: 13. 6 I hand you what I've marked as Exhibit 13. 7 This is the injunctive -- the injunctive 8 terms for the CVS -- did I give you mine? 9 Well, it will direct you to where I want you to 10 go. That's fine. It's just highlights, right? 11 Oh, no -- yeah, it's just highlights. 12 Actually, that's fine. I'm happy to use 13 that because that will help direct you where 14 I'm going. 15 Page 13. 16 THE WITNESS: Thank you. 17 MS. MILLER: So the -- these are the 18 injunctive terms that were attached to the CVS 19 pharmacy agreement. 20 (Exhibit 14 was marked for 21 identification.) 22 MS. MILLER: I hand you Exhibit 14. These 23 are the injunctive terms for the Walmart 24 settlement agreement. 25</p>
<p style="text-align: right;">Page 103</p> <p>1 reference to "The vast majority of states have 2 entered into these settlement agreements with 3 Walgreens, Walmart, and CVS," correct? 4 A. I would think -- that's what the chart 5 says, yes. 6 Q. Okay. And the settlement agreements that 7 we're referring to, I'll represent to you, are the 8 settlement agreements you're referring to that have 9 the -- that included the diversion protection 10 policies that you make reference to. 11 I will ask you to accept that on my 12 representation. I won't hold you to that. 13 MR. ELSNER: I have an objection as to the 14 foundation for the question. 15 BY MS. MILLER: 16 Q. Were you aware that the State of Texas had 17 entered into this national settlement agreement with 18 Walgreens, Walmart, and CVS? 19 A. No. 20 Q. Okay. And were you aware that 21 Tarrant County has agreed to the settlement terms in 22 the agreement between Walgreens, Walmart, and CVS? 23 A. No. 24 MR. ELSNER: Objection. Sorry. 25</p>	<p style="text-align: right;">Page 105</p> <p>1 (Exhibit 15 was marked for 2 identification.) 3 MS. MILLER: And then I'm going to hand 4 you what I've marked as Exhibit 15. These are 5 the injunctive terms for the Walgreens 6 settlement agreement. 7 (Exhibit 16 was marked for 8 identification.) 9 MS. MILLER: And then, last but not least, 10 Exhibit 16, I will represent to you is the 11 injunctive order from the MDL that you 12 referenced in the report. 13 BY MS. MILLER: 14 Q. I'm going to direct your attention to, in 15 Exhibit 13, to Page 13. And, actually, beginning on 16 Page 12, there's a reference at the bottom that 17 requires the pharmacy to require their pharmacists 18 to treat the following circumstances as patient red 19 flags. 20 Do you see that? Okay. 21 So if you look at Subsection d, the red 22 flag that's identified in this agreement states, 23 "The distance between a patient's residence and the 24 settling pharmacy receiving the designated 25 controlled substance prescription is farther than</p>

<p style="text-align: right;">Page 106</p> <p>1 50 miles."</p> <p>2 Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Okay. Is it your opinion that setting</p> <p>5 this red flag of the distance between the patient's</p> <p>6 residence and the settling pharmacy at 50 miles</p> <p>7 instead of 25 miles, is it your opinion that this</p> <p>8 is -- would not be a reasonable red flag, or do you</p> <p>9 believe that this is a reasonable red flag for a</p> <p>10 pharmacy?</p> <p>11 MR. ELSNER: Objection.</p> <p>12 THE WITNESS: I have no basis to determine</p> <p>13 that, because my red flags were based upon</p> <p>14 prior DEA rulings and pharmacy practice.</p> <p>15 I notice in this document that the court</p> <p>16 also said that early refill of three days, when</p> <p>17 I said five days.</p> <p>18 So I think the court made a decision based</p> <p>19 upon legal analysis, and whether or not it's</p> <p>20 reasonable or not, I can't determine. I can</p> <p>21 say that I believe my red flags were</p> <p>22 reasonable.</p> <p>23 BY MS. MILLER:</p> <p>24 Q. Okay. Would you agree with me that</p> <p>25 reasonable pharmacists could disagree as to</p>	<p style="text-align: right;">Page 108</p> <p>1 That would be up to the pharmacist and then</p> <p>2 whatever jurisdiction would be reviewing those</p> <p>3 records.</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Okay. In your opinion, with respect to</p> <p>6 the pharmacy standard of care, is it your opinion</p> <p>7 that a red flag of the distance between the</p> <p>8 patient's residence and the pharmacy being farther</p> <p>9 than 50 miles, is it your opinion that that is an</p> <p>10 unreasonable establishment of a red flag pursuant to</p> <p>11 the pharmacy standard of care?</p> <p>12 MR. ELSNER: Objection, foundation.</p> <p>13 THE WITNESS: I would say, based upon my</p> <p>14 experience and knowledge, I would rely on the</p> <p>15 25 miles. I don't know what led the court to</p> <p>16 decide on 50 miles.</p> <p>17 So without seeing those data, I can't say,</p> <p>18 but I would use the 25 miles as a pharmacist.</p> <p>19 BY MS. MILLER:</p> <p>20 Q. Okay. I would say this one is actually</p> <p>21 not the court order. This is the injunctive relief</p> <p>22 terms upon which the states which entered into the</p> <p>23 settlement agreement with these pharmacies agreed</p> <p>24 upon, including the State of Texas.</p> <p>25 Is this in a reasonable -- this agreement</p>
<p style="text-align: right;">Page 107</p> <p>1 whether -- in their exercise of professional</p> <p>2 judgment could disagree to whether the red flag as</p> <p>3 referenced in your Exhibit 1 should be 25 miles or</p> <p>4 50 miles?</p> <p>5 MR. ELSNER: Objection, foundation.</p> <p>6 THE WITNESS: I would say, myself</p> <p>7 included, pharmacists are generally</p> <p>8 anal-retentive, and I'm sure they would</p> <p>9 disagree with any number, so ...</p> <p>10 BY MS. MILLER:</p> <p>11 Q. My question is, in your opinion, is it</p> <p>12 reasonable -- would it be reasonable within the</p> <p>13 exercise of professional judgment for pharmacists to</p> <p>14 disagree as to which constitutes a red flag,</p> <p>15 25 miles or 50 miles?</p> <p>16 MR. ELSNER: Objection.</p> <p>17 THE WITNESS: All I can do in responding</p> <p>18 to that is saying I feel that 25 is a</p> <p>19 reasonable point to cause the pharmacist to do</p> <p>20 an analysis. 50 miles, I don't have any</p> <p>21 information to validate whether 50 is or not.</p> <p>22 I know that, for me, 25, and for the red</p> <p>23 flags I designed, was reasonable. But I</p> <p>24 can't -- I haven't analyzed the other.</p> <p>25 Can a pharmacist feel that 50 or 100?</p>	<p style="text-align: right;">Page 109</p> <p>1 to 50 miles, is this counter to the pharmacy</p> <p>2 standard of care?</p> <p>3 MR. ELSNER: Objection.</p> <p>4 THE WITNESS: Again, I think this was a</p> <p>5 decision reached with legal parties. I don't</p> <p>6 know what the basis for the 50 was, if it was a</p> <p>7 compromise between parties.</p> <p>8 For me, I would not use the 50. I feel</p> <p>9 the 25 is a reasonable consideration.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. Okay. I understand that you believe the</p> <p>12 25 miles is a reasonable consideration, but you're</p> <p>13 here expressing opinions on standard of care.</p> <p>14 A. Okay.</p> <p>15 Q. And what I'd like to know is, is using</p> <p>16 50 miles in violation of the pharmacy standard of</p> <p>17 care?</p> <p>18 MR. ELSNER: Objection, foundation.</p> <p>19 You're using a settlement document to try</p> <p>20 to establish standard of care, and he's not a</p> <p>21 lawyer and wasn't involved in those</p> <p>22 negotiations.</p> <p>23 So I think it's an unfair ability to</p> <p>24 allocate between the two.</p> <p>25 So you can answer your questions, but I'm</p>



<p style="text-align: right;">Page 110</p> <p>1 going to raise an objection to its use in this</p> <p>2 way.</p> <p>3 THE WITNESS: I would say, based upon two</p> <p>4 factors, that it is an unreasonable</p> <p>5 determination.</p> <p>6 And the two factors are my prior</p> <p>7 experience and work and also the determination</p> <p>8 that Albertsons made in its policy documents to</p> <p>9 say that 15 to 20 miles should be the distance</p> <p>10 that pharmacists should look at, and they did</p> <p>11 not say 50 miles.</p> <p>12 So with Albertsons' support of that and my</p> <p>13 research, I would say 25 is reasonable and 50</p> <p>14 is not reasonable.</p> <p>15 BY MS. MILLER:</p> <p>16 Q. Okay. So the same question ...</p> <p>17 Would you agree with me that the red flag</p> <p>18 calculations that you instructed Mr. McCann to do</p> <p>19 were based on your red flag of 25 miles within Red</p> <p>20 Flag Number 1, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree -- did you ask Mr. McCann</p> <p>23 to perform that calculation with respect to any</p> <p>24 other distance of miles than 25?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. ELSNER: Same objection.</p> <p>2 BY MS. MILLER:</p> <p>3 Q. Okay. Red flag computation Number 2 from</p> <p>4 your report and identified in Mr. McCann's summary,</p> <p>5 states that "An opioid was dispensed to a patient</p> <p>6 who traveled more than 25 miles to visit their</p> <p>7 prescriber."</p> <p>8 The distance here is calculated from the</p> <p>9 center of the patient's ZIP code to the center of</p> <p>10 the prescriber's ZIP code.</p> <p>11 Same questions as with Red Flag Number 1.</p> <p>12 Would you agree with me that in all of the</p> <p>13 industry documents that reflected guidance regarding</p> <p>14 red flags, that none of those industry documents</p> <p>15 that we have gone through identified a specific</p> <p>16 mileage of what would be considered a long distance</p> <p>17 to trigger a red flag?</p> <p>18 MR. ELSNER: Objection.</p> <p>19 THE WITNESS: I think the industry</p> <p>20 documents that reference in some cases do</p> <p>21 identify distances, and some of those distances</p> <p>22 are less than and more than 25 miles,</p> <p>23 particularly some of the DEA cases.</p> <p>24 BY MS. MILLER:</p> <p>25 Q. Okay. Sitting here today, do you know</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Okay. Would you agree with me that if you</p> <p>2 had set this red flag to 50 miles, rather than</p> <p>3 25 miles, it's possible that Mr. McCann's red flag</p> <p>4 calculations would be different?</p> <p>5 MR. ELSNER: Objection.</p> <p>6 THE WITNESS: I can't comment on the</p> <p>7 dataset. But I would say from just the</p> <p>8 conceptual, it would make sense that that would</p> <p>9 happen.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. I will represent to you that the same term</p> <p>12 in Subsection d appears in the CVS agreement and in</p> <p>13 the Walmart agreement in Exhibit 14 on Page 13 as</p> <p>14 well.</p> <p>15 And the Walgreens agreement, which is not</p> <p>16 numbered -- and the Walgreens agreement, I will</p> <p>17 represent to you that that contains the same term of</p> <p>18 50 miles.</p> <p>19 And I will represent to you, with</p> <p>20 Exhibit 16 in the injunctive relief order on Page 9,</p> <p>21 the order from the court also entered injunctive</p> <p>22 relief as to the pharmacies based on including a red</p> <p>23 flag of 50 miles.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 113</p> <p>1 which DEA cases identified as a red flag less than</p> <p>2 25 miles?</p> <p>3 A. Not today, I can't recall.</p> <p>4 Q. You stated that some of them were more</p> <p>5 than 25 miles, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Would you agree with me that reasonable</p> <p>8 pharmacists could disagree as to whether 25 miles is</p> <p>9 an appropriate trigger for the red flag?</p> <p>10 MR. ELSNER: Objection.</p> <p>11 THE WITNESS: I'm sure pharmacists would</p> <p>12 disagree with any number, but yes.</p> <p>13 BY MS. MILLER:</p> <p>14 Q. Okay. Would you agree that reasonable</p> <p>15 pharmacists could disagree in the exercise of their</p> <p>16 professional judgment that 25 -- as to the number</p> <p>17 25 miles as a trigger for the red flag?</p> <p>18 MR. ELSNER: Objection.</p> <p>19 THE WITNESS: I'm having trouble with</p> <p>20 "reasonable." I don't know what they would be</p> <p>21 looking at and how to qualify them as</p> <p>22 reasonable.</p> <p>23 I would say that 25 is a reasonable</p> <p>24 trigger that I've determined.</p> <p>25</p>

<p style="text-align: right;">Page 114</p> <p>1 BY MS. MILLER:</p> <p>2 Q. Okay. I'll ask you to turn to Exhibit 13,</p> <p>3 again, on -- this is the CVS injunctive terms, again</p> <p>4 on Page 13, Subsection e references a red flag, "The</p> <p>5 patient resides more than 100 miles from the</p> <p>6 prescriber who issued the designated controlled</p> <p>7 substance prescription."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. I will represent to you that this term is</p> <p>11 similar in other injunctive relief agreements to</p> <p>12 which a majority of the state Attorney Generals have</p> <p>13 agreed to.</p> <p>14 In your opinion, is this red flag setting</p> <p>15 the distance of 100 miles as being the trigger for</p> <p>16 this red flag contrary to the pharmacy standard of</p> <p>17 care?</p> <p>18 MR. ELSNER: Objection.</p> <p>19 THE WITNESS: Again, I would have to look</p> <p>20 at the dataset to see what patients were</p> <p>21 triggered by 100 miles versus 25 miles and how</p> <p>22 that impacted the standard of care.</p> <p>23 Without those data, I can't determine if</p> <p>24 that's true or not.</p> <p>25</p>	<p style="text-align: right;">Page 116</p> <p>1 couldn't see anything that would counter that, then</p> <p>2 I would -- I have used the 25 miles as the indicator</p> <p>3 for that.</p> <p>4 Q. Okay. But in forming your opinions in</p> <p>5 this case in identifying Red Flag Number 2, did you</p> <p>6 look at any datasets to determine whether 25 miles</p> <p>7 was an appropriate trigger for this red flag before</p> <p>8 providing this to Mr. McCann to do his analysis?</p> <p>9 MR. ELSNER: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MS. MILLER:</p> <p>12 Q. Did you -- after having Mr. McCann perform</p> <p>13 his analysis, did you analyze any data to determine</p> <p>14 whether Red Flag Number 2 was an appropriate trigger</p> <p>15 for this red flag?</p> <p>16 A. Yes.</p> <p>17 Q. What did you -- what did you look at?</p> <p>18 A. For every prescription that triggered a</p> <p>19 red flag, I reviewed that prescription and the</p> <p>20 information that I just detailed to you, anything in</p> <p>21 the patient notes, anything that would explain that</p> <p>22 prescription, any resolution, identification of the</p> <p>23 red flags.</p> <p>24 I did not come across anything in that</p> <p>25 analysis that said that the 25 miles for those</p>
<p style="text-align: right;">Page 115</p> <p>1 BY MS. MILLER:</p> <p>2 Q. Okay. Did you analyze any data when</p> <p>3 setting this red flag at 25 miles?</p> <p>4 A. I'm sorry, by "analyzing," could you</p> <p>5 explain?</p> <p>6 Q. Well, you just said that you would need to</p> <p>7 analyze data to determine whether 100 miles is</p> <p>8 reasonable versus 25 miles.</p> <p>9 A. Okay.</p> <p>10 Q. And my question is, did you analyze any</p> <p>11 data when you were setting -- when you were</p> <p>12 establishing these red flags?</p> <p>13 A. Yes.</p> <p>14 Q. What data did you evaluate?</p> <p>15 A. One, I would look at the actual hard-copy</p> <p>16 prescription to see what was actually prescribed for</p> <p>17 the patient.</p> <p>18 Then I would check to see whether or not</p> <p>19 the medication was within the dosing ranges that</p> <p>20 were recommended and safe for the patient.</p> <p>21 Third, I would look to see if there were</p> <p>22 any pharmacists' notes or any notes in that patient</p> <p>23 profile or in that record that would say -- that</p> <p>24 would disqualify 25 miles as a red flag.</p> <p>25 And if I couldn't find any notes or</p>	<p style="text-align: right;">Page 117</p> <p>1 patients was not a relevant and reasonable red flag.</p> <p>2 Had I come across that, I would have</p> <p>3 notified to counsel, Mr. McCann, to say there's</p> <p>4 something wrong here, we need to adjust the numbers.</p> <p>5 But I did not find any.</p> <p>6 Q. What would have identified to you that</p> <p>7 25 miles was not a reasonable red flag?</p> <p>8 What would you have found in the notes?</p> <p>9 A. I would have found something in the</p> <p>10 patient notes saying this patient traveled to the</p> <p>11 University of Chicago for special care, even though</p> <p>12 the patient lived in Winnetka or someplace, and it</p> <p>13 was more than 25 miles.</p> <p>14 If I had seen that in the notes, that</p> <p>15 would have helped me make a better decision.</p> <p>16 Q. Okay. And so I'm a little bit lost</p> <p>17 because my understanding is the red flag is the</p> <p>18 trigger at the outset of the analysis, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So when you established a red flag at 25,</p> <p>21 25 miles, that's your statement to the pharmacist</p> <p>22 that anything above 25 miles center of ZIP code to</p> <p>23 center of ZIP code, the pharmacist should have</p> <p>24 identified as a red flag up front?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. Correct?</p> <p>2 In what way would reviewing the notes, a</p> <p>3 sample of the notes after the fact, inform your</p> <p>4 decision as to whether this was an appropriate flag</p> <p>5 up front?</p> <p>6 A. Sure. In my report, I think I cite,</p> <p>7 twice, the percentage of prescriptions that I</p> <p>8 believe Albertsons filled without enacting the</p> <p>9 proper due diligence. And that percentage is at</p> <p>10 95 percent. And that was based upon reviewing the</p> <p>11 hard-copy prescription and all of the notes.</p> <p>12 Had I found things in the notes that would</p> <p>13 have told me differently, that 95 percent percentage</p> <p>14 would have been significantly reduced, or reduced</p> <p>15 based upon whatever number of prescriptions.</p> <p>16 But I did not see anything to the contrary</p> <p>17 to say that that 25-mile trigger was unreasonable or</p> <p>18 that the data provided by Dr. McCann was inaccurate</p> <p>19 regarding that red flag.</p> <p>20 Q. Okay. The notes that you reviewed were</p> <p>21 notes of -- were a sample of notes that were</p> <p>22 triggered by the red flags that you've identified,</p> <p>23 correct?</p> <p>24 A. I think they were -- Albertsons was</p> <p>25 requested to provide 400 sample prescriptions, and</p>	<p style="text-align: right;">Page 120</p> <p>1 can answer it.</p> <p>2 There's two things that I think are on the</p> <p>3 table here.</p> <p>4 One, if you're saying in the pharmacist's</p> <p>5 judgment there wasn't a red flag, then that</p> <p>6 would occur.</p> <p>7 But if that red flag was there and the</p> <p>8 pharmacist should have known it, then that red</p> <p>9 flag would have been counted and that</p> <p>10 prescription should have been analyzed.</p> <p>11 BY MS. MILLER:</p> <p>12 Q. I understand that. I'm really focused on</p> <p>13 whether there's a note.</p> <p>14 So if the pharmacist doesn't recognize a</p> <p>15 red flag, you would not expect the pharmacist to do</p> <p>16 due diligence on that prescription, and, therefore,</p> <p>17 there would not be due diligence notes on the</p> <p>18 prescription, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So when you make reference to the</p> <p>21 fact that you've estimated 95 percent of Albertsons'</p> <p>22 notes -- or Albertsons' prescriptions do not have</p> <p>23 appropriate notes, that's based on an assumption</p> <p>24 that all of those prescriptions were subject to a</p> <p>25 red flag that would have required notes, correct?</p>
<p style="text-align: right;">Page 119</p> <p>1 then associated prescriptions with those</p> <p>2 prescriptions, and I looked at the notes for the</p> <p>3 sample provided by Albertsons based upon that.</p> <p>4 Q. Okay. If there isn't a red flag -- if a</p> <p>5 pharmacist doesn't recognize a prescription as</p> <p>6 triggering a red flag, would you agree with me that</p> <p>7 there's not likely going to be due diligence notes</p> <p>8 on that prescription?</p> <p>9 MR. ELSNER: Objection.</p> <p>10 THE WITNESS: If the pharmacist doesn't</p> <p>11 recognize the red flag, in the case of</p> <p>12 Albertsons, most of the prescriptions did not</p> <p>13 have notes, 85 percent of them or 86 percent.</p> <p>14 But if the pharmacist didn't recognize it,</p> <p>15 the red flag would still be counted and</p> <p>16 probably, based upon the percentage of notes</p> <p>17 that were absent from Albertsons, I would</p> <p>18 suspect there wouldn't be a note.</p> <p>19 BY MS. MILLER:</p> <p>20 Q. Right. As you testified before, if a</p> <p>21 pharmacist is presented with a prescription that is</p> <p>22 not red-flagged, then the pharmacist would not need</p> <p>23 to do that extra due diligence, correct?</p> <p>24 MR. ELSNER: Objection.</p> <p>25 THE WITNESS: I'm trying to follow so I</p>	<p style="text-align: right;">Page 121</p> <p>1 A. No. My statement was that 95 percent of</p> <p>2 the prescriptions dispensed by Albertsons did not</p> <p>3 perform the required components of due diligence.</p> <p>4 And 86 percent of the notes that I</p> <p>5 reviewed, approximately, had no comments whatsoever.</p> <p>6 And of the 14 percent or so that I did review, less</p> <p>7 than probably 1 percent had any relevant notes to</p> <p>8 the actual prescription.</p> <p>9 Q. Correct. But to the extent that those</p> <p>10 prescriptions required notes, that would be based on</p> <p>11 whether that prescription was subject to a red flag,</p> <p>12 correct?</p> <p>13 A. I'm lost. If the prescription has a red</p> <p>14 flag, then there should have been notes. It</p> <p>15 requires notes.</p> <p>16 Q. Right.</p> <p>17 A. And who makes that determination of a red</p> <p>18 flag, there are standards that have to be present in</p> <p>19 those prescriptions. And if the pharmacist doesn't</p> <p>20 catch those standards or those red flags, there</p> <p>21 wouldn't be a note, but there should be, and that's</p> <p>22 what I looked at as to what should be and what was</p> <p>23 missing.</p> <p>24 Q. Okay. What I'm trying to get to is, if a</p> <p>25 prescription is not subject to an identifiable red</p>

<p style="text-align: right;">Page 122</p> <p>1 flag the pharmacist should have recognized, you  2 would not expect there to be notes on that  3 prescription, correct?  4 MR. ELSNER: Objection.  5 THE WITNESS: I believe so, yes. I'm just  6 not really following, too, but I would say I  7 believe so.  8 BY MS. MILLER:  9 Q. Okay. What I'm getting at is your  10 opinions are that Albertsons did not have notes  11 on -- appropriate documentation on 95 percent of the  12 prescriptions?  13 A. No. My testimony is that Albertsons  14 failed to recognize the red flags, resolve the red  15 flags, and document the red flags in 95 percent of  16 the sample prescriptions that I reviewed.  17 And the notes were one of the determiners  18 of that 95 percent percentage.  19 Q. And that is based on the red flags that  20 you have identified in your report as you've stated  21 them, correct?  22 A. Correct, yes.  23 Q. And with Red Flag Number 2, similar to Red  24 Flag Number 1, you did not ask Dr. McCann to analyze  25 prescriptions that would have been triggered by any</p>	<p style="text-align: right;">Page 124</p> <p>1 be identified as a red flag, based on this factor,  2 correct?  3 A. No.  4 Q. Okay.  5 A. I don't agree with that.  6 Q. You don't agree with that?  7 A. No.  8 Q. So how would the pharmacist appreciate a  9 red flag on the first prescription that it received,  10 before there was an additional prescription written  11 by a different prescriber?  12 A. Again, two distinct but related concepts.  13 Upon presentation of that prescription to  14 the pharmacist, if it was a first-time new patient,  15 the pharmacist wouldn't know, may not know or  16 shouldn't know, depending upon the prescription.  17 But upon filling the second prescription  18 or seeing the other prescription, then that red flag  19 gets counted in the assessment. And there should  20 have been notes in there, in the notes for that  21 second and associated prescription, saying, we've  22 identified that this first prescription was probably  23 also a red flag and shouldn't have been filled or  24 because of the following reasons.  25 I could not find any of that</p>
<p style="text-align: right;">Page 123</p> <p>1 number that was different than 25 miles?  2 A. Correct.  3 Q. Would you agree with me that if Dr. McCann  4 had used 100 miles as the geographical limit for Red  5 Flag Number 2, that his calculations would likely  6 have been different?  7 A. In regard to the specific dataset, my  8 answer is I don't know. But in terms of the  9 concept, probably, yes.  10 Q. All right. Turning to Red Flag Number 3,  11 which states, "Patient was dispensed opioid  12 prescriptions with overlapping days of supply that  13 were written by two or more prescribers," correct?  14 A. Yes.  15 Q. Okay. And I think, as you've noted in  16 your report, do you agree that this flag is  17 triggered by multiple prescriptions, correct?  18 MR. ELSNER: Objection.  19 THE WITNESS: I think, yes. I mean, to  20 have two or more prescribers, you'd have to  21 have at least two prescriptions, yes.  22 BY MS. MILLER:  23 Q. Right, correct. And you would agree with  24 me that with two or more prescriptions, the first  25 prescription presented to the pharmacist would not</p>	<p style="text-align: right;">Page 125</p> <p>1 documentation.  2 Q. With respect to Dr. McCann's calculations  3 of the number of prescriptions that were  4 red-flagged, did you ask Dr. McCann to disregard the  5 first prescriptions in his calculations?  6 A. No.  7 Q. Would you agree that Dr. McCann's red flag  8 calculations would have been lower if he had  9 disregarded the first prescription?  10 A. From a -- just conceptually, yes.  11 Q. Red Flag Number 4 is, "A patient was  12 dispensed opioid prescriptions with overlapping days  13 of supply at two or more pharmacies."  14 Correct?  15 A. Correct.  16 Q. Okay. Same with Red Flag Number 3.  17 Would you agree with me that the  18 pharmacist, upon being presented with the first of  19 these prescriptions, would not have a basis to  20 identify it as a red flag under this factor?  21 MR. ELSNER: Objection.  22 THE WITNESS: That one, I disagree with.  23 BY MS. MILLER:  24 Q. Okay. Why do you disagree with that?  25 A. And now I will raise that same objection</p>

<p style="text-align: right;">Page 126</p> <p>1 with -- I mean, disagreement with Item 3.</p> <p>2 If the pharmacist was viewing the PDMP</p> <p>3 program for their first prescription, which, at some</p> <p>4 point, was required by Texas Board of Pharmacy, the</p> <p>5 pharmacist would have identified the multiple</p> <p>6 prescribers for red flag 3 as well as the multiple</p> <p>7 pharmacies in 4.</p> <p>8 So that first prescription should have</p> <p>9 been identified by the pharmacist. I apologize for</p> <p>10 that mistake.</p> <p>11 Q. How would a pharmacist -- if this is the</p> <p>12 first prescription that a pharmacist is presented</p> <p>13 and there are no other prescriptions that have been</p> <p>14 issued for this patient, how would a pharmacist</p> <p>15 recognize that as a red flag?</p> <p>16 A. In that singular hypothesis, then the</p> <p>17 pharmacist wouldn't be able to recognize upon</p> <p>18 presentation but would recognize somewhere down the</p> <p>19 line.</p> <p>20 Q. Did you ask Dr. McCann to disregard the</p> <p>21 first prescription in his calculations?</p> <p>22 A. No.</p> <p>23 Q. And would you agree with me that his red</p> <p>24 flag calculations would be lower if he had</p> <p>25 disregarded the first prescription?</p>	<p style="text-align: right;">Page 128</p> <p>1 pharmacy or if there was something else about the</p> <p>2 patient, then it wouldn't be known to the pharmacist</p> <p>3 on the first.</p> <p>4 But if they had the other information, it</p> <p>5 would be.</p> <p>6 Q. Okay. And those are different -- those</p> <p>7 are different sources of red flags, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So right now, your -- or Dr. McCann's</p> <p>10 calculations took each of these red flags</p> <p>11 individually and identified what -- if a</p> <p>12 prescription hit on each individual red flag?</p> <p>13 It didn't require there to be other</p> <p>14 instances of red flags in order for it to trigger in</p> <p>15 Dr. McCann's analysis, correct?</p> <p>16 MR. ELSNER: Objection to form.</p> <p>17 THE WITNESS: I think that's correct. But</p> <p>18 I don't -- I wasn't involved in his analysis,</p> <p>19 but it sounds like what that process might be,</p> <p>20 but I'd have to ...</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Did you ask Dr. McCann to disregard any</p> <p>23 initial prescriptions triggered by this red flag in</p> <p>24 his calculations?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. ELSNER: Objection.</p> <p>2 THE WITNESS: That doesn't obviate the red</p> <p>3 flag, but conceptually the number would be</p> <p>4 lower.</p> <p>5 BY MS. MILLER:</p> <p>6 Q. Okay. Red Flag Number 5, "Patient was</p> <p>7 dispensed an opioid, a benzodiazepine, and a muscle</p> <p>8 relaxer for overlapping days of supply," correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And this is a red flag that's often</p> <p>11 referred to as "the trinity" or "the holy trinity,"</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. By wording this red flag as</p> <p>15 referencing "overlapping days of supply," would you</p> <p>16 agree that this would encompass prescriptions that</p> <p>17 were presented to a pharmacy at different times?</p> <p>18 A. It could be, yes, could be.</p> <p>19 Q. Okay. And would you agree with me,</p> <p>20 similar to the last two flags we talked about, that</p> <p>21 the first prescription that was presented to the</p> <p>22 pharmacist would not have a basis to be recognized</p> <p>23 as a red flag under this factor?</p> <p>24 A. I would, with the qualification that if</p> <p>25 the prescriber was problematic and known to the</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And, again, would you agree with me that</p> <p>2 his red flag calculations would be lower if he did</p> <p>3 disregard the first prescription?</p> <p>4 A. Same response. Still a red flag, but the</p> <p>5 numbers conceptually would be lower.</p> <p>6 Q. Red Flag Number 6 is, "A patient was</p> <p>7 dispensed an opioid, a benzodiazepine, and a muscle</p> <p>8 relaxer on the same day, and all the prescriptions</p> <p>9 were written by the same prescriber," correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Would you agree with me that if a</p> <p>12 prescription triggers Red Flag Number 6, by its very</p> <p>13 nature, it would also trigger Red Flag Number 5,</p> <p>14 which is broader than Red Flag Number 6?</p> <p>15 A. I think in Dr. McCann's, Number 6 is</p> <p>16 broader -- 5 is broader. Yes, 5 is broader than 6.</p> <p>17 Q. Okay. So by its very nature, if a</p> <p>18 prescription triggered Red Flag Number 6, it would</p> <p>19 automatically also trigger Red Flag Number 5,</p> <p>20 correct?</p> <p>21 A. For Number 6 to be triggered, there would</p> <p>22 have to be three prescriptions. And if those three</p> <p>23 prescriptions were there, then it would trigger</p> <p>24 Number 5. One prescription wouldn't trigger 5.</p> <p>25 Q. Okay. That's a good clarification.</p>



<p style="text-align: right;">Page 130</p> <p>1 But the prescriptions, if the</p> <p>2 prescriptions triggered Red Flag Number 6, would you</p> <p>3 agree with me it would also automatically trigger</p> <p>4 Red Flag Number 5?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Dr. McCann performed calculations</p> <p>7 of not just individual -- or prescriptions that</p> <p>8 triggered individual red flags, but he also</p> <p>9 performed calculations of prescriptions that</p> <p>10 triggered multiple red flags, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ask Dr. McCann to exclude any</p> <p>13 prescriptions in that analysis that would have</p> <p>14 triggered only both red flag -- Red Flag 6 in these</p> <p>15 calculations?</p> <p>16 MR. ELSNER: Objection.</p> <p>17 THE WITNESS: Any analysis of the data</p> <p>18 that would involve deduplication, I left to</p> <p>19 Dr. McCann and his expertise. I was not</p> <p>20 involved in how he made those determinations.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Do you agree with me that Dr. McCann's</p> <p>23 calculations of prescriptions that triggered</p> <p>24 multiple red flags would have likely been lower had</p> <p>25 he excluded prescriptions that triggered --</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Uh-huh.</p> <p>2 Q. Okay. Are there any sources that you have</p> <p>3 identified for this red flag in which pharmacies</p> <p>4 were provided guidance that an opioid and a</p> <p>5 benzodiazepine, without a muscle relaxer, would</p> <p>6 trigger a red flag?</p> <p>7 A. Yes.</p> <p>8 Q. What documents are those?</p> <p>9 A. If you look on Page 40, Reference 116, DEA</p> <p>10 administrative decision and See Your Druggist</p> <p>11 Pharmacy, I know that was sent.</p> <p>12 If you look at all of 118, all of the</p> <p>13 references are documents, the East Main Street</p> <p>14 Pharmacy decision, Number 119 reference, Centers for</p> <p>15 Disease Control on Page 41, 120, all of those</p> <p>16 references were information that spotlighted and</p> <p>17 highlighted the problems of prescribing benzos and</p> <p>18 opioids.</p> <p>19 Q. But all of those references -- and correct</p> <p>20 me if I'm wrong, but all of those references also</p> <p>21 included a muscle relaxer?</p> <p>22 A. I don't believe all of them did, but --</p> <p>23 that would be something to further check, but I</p> <p>24 don't believe all the references did.</p> <p>25 Q. Okay. If -- if you were aware of any</p>
<p style="text-align: right;">Page 131</p> <p>1 automatically triggered Red Flag 5 and Red Flag 6?</p> <p>2 MR. ELSNER: Objection, foundation.</p> <p>3 THE WITNESS: I can't agree with that</p> <p>4 because I don't know. But I suspect it</p> <p>5 doesn't, that McCann's data was deduplicated,</p> <p>6 and you wouldn't have seen both red flags for</p> <p>7 one patient.</p> <p>8 But that would be a question for</p> <p>9 Dr. McCann.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. Okay. But in the preparation of your</p> <p>12 report, do you -- do you know one way or the other</p> <p>13 whether he did exclude that?</p> <p>14 A. I don't know. I would assume that he did,</p> <p>15 but I don't know for certain.</p> <p>16 Q. Okay. Red Flag Number 7 is, "A patient</p> <p>17 was dispensed an opioid and a benzodiazepine within</p> <p>18 30 days of one another," correct?</p> <p>19 A. Correct.</p> <p>20 Q. We've gone through a number of sources,</p> <p>21 industry sources and DEA sources for red flags, and</p> <p>22 I'm going to actually turn you to your report.</p> <p>23 Your discussion of the red flags triggered</p> <p>24 by an opioid and a benzodiazepine starts on Page 40</p> <p>25 and goes to Page 42, correct?</p>	<p style="text-align: right;">Page 133</p> <p>1 references that provided guidance to pharmacies that</p> <p>2 an opioid and a benzo, without a muscle relaxer,</p> <p>3 would constitute a red flag, would you have included</p> <p>4 them in your report?</p> <p>5 MR. ELSNER: Objection.</p> <p>6 THE WITNESS: I believe the references</p> <p>7 note that. If you look at, again, 117, 118,</p> <p>8 and, again, my references standards of</p> <p>9 practice, the FDA made that determination. And</p> <p>10 so there was a black box warning on those drugs</p> <p>11 that were distributed to pharmacies and</p> <p>12 pharmacists.</p> <p>13 So pharmacists would have had that</p> <p>14 information. I didn't include in my report</p> <p>15 what the dosing regimens were for opioids.</p> <p>16 So that black box warning is not something</p> <p>17 that I would have referenced, because it would</p> <p>18 have been a standard of care and known to</p> <p>19 pharmacists.</p> <p>20 BY MS. MILLER:</p> <p>21 Q. Okay. Other than the black box warning</p> <p>22 that was issued by FDA, am I correct that any</p> <p>23 guidance to pharmacies with respect to red flags, if</p> <p>24 they had referenced an opioid and a benzo without a</p> <p>25 muscle relaxer, would you have included those in</p>

<p style="text-align: right;">Page 134</p> <p>1 your report?</p> <p>2 MR. ELSNER: Objection.</p> <p>3 THE WITNESS: I would -- I included as</p> <p>4 relevant references as I thought possible</p> <p>5 without including all of them. So at all</p> <p>6 times, my report and my references are not</p> <p>7 exhaustive.</p> <p>8 And with all due respect, the black box</p> <p>9 warning is significant in pharmacy. It's not</p> <p>10 something that pharmacists would take lightly.</p> <p>11 BY MS. MILLER:</p> <p>12 Q. Okay. And when was the black box warning</p> <p>13 issued by the FDA?</p> <p>14 A. I don't have that date off the top of my</p> <p>15 head.</p> <p>16 Q. Okay. And then this -- this red flag, as</p> <p>17 you have outlined it, defines it as an opioid and a</p> <p>18 benzodiazepine within 30 days of one another,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. What is the source of information</p> <p>22 that triggers a red flag when they're prescribed</p> <p>23 within 30 days of one another?</p> <p>24 A. Again, it goes back to information from</p> <p>25 the FDA and how long the opioid is in a person's</p>	<p style="text-align: right;">Page 136</p> <p>1 dangerous and have a longer half-life and stay in</p> <p>2 the body longer, that's part of the reason for the</p> <p>3 classification, which is -- and a benzo is a</p> <p>4 Schedule III, Schedule III or IV, depending on the</p> <p>5 product.</p> <p>6 Q. When referencing this red flag, that a</p> <p>7 patient was dispensed an opioid and a benzodiazepine</p> <p>8 within 30 days of one another, would you agree with</p> <p>9 me that the calculations would capture prescriptions</p> <p>10 within 30 days of one another regardless of which</p> <p>11 prescription was first?</p> <p>12 So it could be an opioid was dispensed on</p> <p>13 day 1 and a benzo was dispensed on day 30, right?</p> <p>14 A. (Nods head.)</p> <p>15 Q. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. It could also be that a benzo was</p> <p>18 dispensed on day 1 and an opioid was dispensed on</p> <p>19 day 30, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And it's regardless of the number of days</p> <p>22 of supply of that prescription, correct?</p> <p>23 A. No, it would -- the days' supply would be</p> <p>24 something to look at. If the opioid was for one</p> <p>25 day, that wouldn't be a consideration.</p>
<p style="text-align: right;">Page 135</p> <p>1 system and how the interaction between the benzo and</p> <p>2 the opioid would occur, and what that half-life is</p> <p>3 for those drugs, and why the warning is attached to</p> <p>4 it.</p> <p>5 Q. Okay. So the FDA -- if I were to look to</p> <p>6 FDA information, would I learn that the FDA issued a</p> <p>7 warning that a patient cannot take an opioid within</p> <p>8 30 days of a benzodiazepine?</p> <p>9 A. What you would learn is what the</p> <p>10 half-lives are and how long that drug stays in a</p> <p>11 person's system and how long the potential for those</p> <p>12 interactions is.</p> <p>13 It would differ person to person, but it</p> <p>14 would probably give you an idea that within that</p> <p>15 30-day time period, that was most probably going to</p> <p>16 happen.</p> <p>17 Q. Is the half-life of an opioid different</p> <p>18 than a half-life of a benzo?</p> <p>19 A. Yes.</p> <p>20 Q. Which one is shorter?</p> <p>21 A. The shorter one will be the benzo, and it</p> <p>22 goes back to the classification of controlled</p> <p>23 substances.</p> <p>24 So Schedule IIs, which many of the opioids</p> <p>25 are, because they're more addictive and more</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. But that's not captured in this red</p> <p>2 flag, correct -- so, I mean, it is captured in this</p> <p>3 red flag --</p> <p>4 A. Correct.</p> <p>5 Q. -- so there was a one-day opioid</p> <p>6 prescription on day 1, and then a benzo prescription</p> <p>7 on day 30, that would be captured by this red flag,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. But you don't consider that would actually</p> <p>11 be a red flag; is that fair?</p> <p>12 MR. ELSNER: Objection.</p> <p>13 THE WITNESS: Again, I would have to look</p> <p>14 at the individual prescription to see what</p> <p>15 other medications that patient was taking.</p> <p>16 Maybe they were prescribed other opioids on</p> <p>17 that same day as well.</p> <p>18 BY MS. MILLER:</p> <p>19 Q. Okay. But just under this parameter, if</p> <p>20 it was just one opioid for one day, and there are no</p> <p>21 others, and there's a benzo on day 30, you would not</p> <p>22 consider that a red flag if there are no other</p> <p>23 factors?</p> <p>24 A. I would say --</p> <p>25 MR. ELSNER: Objection.</p>



<p style="text-align: right;">Page 138</p> <p>1 THE WITNESS: -- in that hypothetical,  2 yes, but I didn't see that in any of the data.  3 BY MS. MILLER:  4 Q. Did you ask Dr. McCann to look for that in  5 the data?  6 A. No.  7 Q. Did you look for that in the data?  8 A. Yes.  9 Q. Where did you look for that?  10 A. I would review the hard copies of the  11 prescriptions, so I saw the quantity. I looked at  12 the notes, and I calculated the days' supply of all  13 the medications in the sample and the associated  14 prescriptions.  15 Q. Okay. And that's in the 400-sample set  16 and associated prescriptions, correct?  17 A. I think Albertsons provided 320-some, I  18 don't think Albertsons -- and they only provided  19 1400 associated prescriptions.  20 Q. Okay. Assuming that a pharmacist did  21 recognize this combination of prescriptions as a red  22 flag, would you agree that the pharmacist would not  23 be able to recognize the first prescription as a red  24 flag under this factor?  25 A. The same answers as before.</p>	<p style="text-align: right;">Page 140</p> <p>1 we've discussed, would you agree with me that the  2 red flags identified that we had identified of the  3 industry sources or in guidance documents outlining  4 red flags, that none of those red flags identified a  5 specific MME trigger for a red flag pertaining to  6 large quantities of opioids?  7 A. Beyond the standard of care recommended  8 dosing, no.  9 Q. What was the reason that you used 2018 as  10 your year for -- to change the MMEs that would  11 trigger the red flag?  12 A. Those were documents released by the  13 Centers for Disease Control, CDC.  14 Q. So in 2018 -- after 2018, you've  15 identified over 90 MME per day as triggering a red  16 flag based on the CDC guidelines, correct?  17 A. Correct.  18 Q. Okay. So prior to 2018, you have 200 MMEs  19 as triggering this red flag, and what is that 200  20 MME based on?  21 A. 2016 CDC guidelines.  22 Q. So the 200 MME is based on 2016  23 guidelines?  24 A. I'm not sure of the year, but they were  25 the initial guidelines issued by CDC.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Okay.  2 A. Depending on other factors and  3 circumstances, that's hypothetically possible, yes.  4 Q. Okay. Did you instruct Dr. McCann to  5 disregard the first prescription in his -- in  6 performing his calculations?  7 A. No.  8 Q. Okay. Red Flag Number 8 is, "A patient  9 was prescribed an opioid and a benzodiazepine on the  10 same day and both prescriptions were written by the  11 same prescriber," correct?  12 A. Correct.  13 Q. All right. Would you agree with me to --  14 similar, as we saw for Red Flags 5 and 6, that the  15 said prescriptions triggered Red Flag Number 8, it  16 would automatically also trigger Red Flag Number 7?  17 A. Again, I think it would trigger. But  18 whether it was counted by Dr. McCann, I don't know.  19 Q. Okay. I'm going to move to Red Flag  20 Number 10, which is, "A patient was dispensed an  21 opioid prescription of over 200 MME per day in or  22 before 2018 or over 90 MME per day after 2018,"  23 correct?  24 A. Yes.  25 Q. Okay. Similar to the geographic red flags</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Okay. So for prescriptions that were  2 issued prior to 2016 or prior to the issuance of the  3 CDC guidelines, what would be the basis to determine  4 that 200 MMEs was -- or should trigger a red flag?  5 A. In my report on Page 45 is the  6 substantiation for that, where it said, dosages of  7 100 MME or more per day were found to increase risk  8 for opioid overdose by factors of 2 to 8.9 percent,  9 and doses of 200 milligrams per day, there was a  10 continued increase in mortality rates.  11 So it was based upon information in the  12 literature.  13 Q. Okay. That's literature that was issued  14 in 2016, correct?  15 A. I think there was other literature, if I  16 check some of the sources, that was prior to that.  17 But in 2010, that was issued, "Opioid  18 prescriptions for chronic pain and overdose: a  19 cohort study," in 2010.  20 2011, "Association Between Opioid  21 Prescribing Patterns and Opioid Overdose-Related  22 Deaths."  23 So that -- if you look at those  24 references, many of them were before 2016, and  25 that's what formed the basis for my 200 MME.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q. Okay. And am I correct that these are 2 medical articles, medical journal articles? 3 A. They're published, referenced studies in 4 the professional literature; medical, pharmacy, 5 wherever they're published. 6 Q. Okay. The ones you have cited, these are 7 not pharmacy publications, correct? 8 MR. ELSNER: Objection. 9 THE WITNESS: They weren't published in 10 pharmacy journals, but they were -- I think 11 pharmacists are allowed to read medical 12 journals, but I don't -- I mean, but beyond 13 that, I don't know. 14 BY MS. MILLER: 15 Q. Okay. Red Flag Number 11, "An opioid was 16 dispensed to at least four different patients on the 17 same day, and the opioid prescriptions were for the 18 same base drug, strength, and dosage form and were 19 written by the same prescriber," correct? 20 A. Correct. 21 Q. Okay. Similar with prior questions that 22 are triggered by multiple prescriptions, would you 23 agree the first three prescriptions would not be 24 recognized by a pharmacist as triggering this red 25 flag, which is based on four prescriptions, correct?</p>	<p style="text-align: right;">Page 144</p> <p>1 Page 50 of your report. 2 And you note that the reason you've 3 identified this red flag, as you've explained, is 4 that prescription opioids used for pain relief 5 should be prescribed and taken for a short time, and 6 patient prescribed opioids for longer than 7 six months increases the risk of addiction and is a 8 red flag, correct? 9 A. Yes. 10 Q. Okay. Has your -- what's the basis for 11 identifying this as a red flag? 12 Are there any industry sources that you 13 can point to that would tell pharmacies that this is 14 a red flag? 15 A. The basic literature released by the FDA 16 for this drug, and then information that I've just 17 mentioned about the addictive powers and problems 18 with the drugs. 19 Q. Okay. And similar to questions before, 20 all the industry guidance and the lists of red flags 21 that we've discussed today, would you agree that 22 none of those specify a red flag based on more than 23 210 days of supply within a six-month period? 24 A. It doesn't reference that but refers to 25 standards of care where that information would be</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Depending on what those three 2 prescriptions were, they may recognize -- they may 3 be red flags recognized by the other red flags. 4 Q. So there would be other red flags. But 5 specifically to this red flag, this is the only -- 6 only circumstance that would trigger a red flag, is 7 based on four prescriptions. 8 Would you agree with me that the first 9 three prescriptions would not trigger this red flag? 10 A. Correct. 11 MR. ELSNER: Objection. 12 BY MS. MILLER: 13 Q. Did you instruct Dr. McCann to disregard 14 the first three prescriptions in his red flag 15 calculations? 16 A. No. 17 Q. And would you agree that his calculations 18 would be -- likely be different if he had done so? 19 A. Conceptually, yes. 20 Q. Moving to Red Flag Number 13, which is, "A 21 patient was dispensed more than 210 days of supply 22 of all opioids in a combined six-month period," 23 correct? 24 A. Correct. 25 Q. All right. And you discussed this one on</p>	<p style="text-align: right;">Page 145</p> <p>1 found. 2 Q. Okay. And the standards of care where 3 that information would be found, the general concept 4 being that opioids should not be prescribed for a 5 long period of time, is that -- 6 A. Yes. 7 MR. ELSNER: Objection. 8 THE WITNESS: Yes. 9 BY MS. MILLER: 10 Q. Am I understanding that correctly? 11 A. That's the basics. 12 Q. Would you agree with me that the standard 13 of care with respect to the long-term use of opioids 14 has changed over time? 15 A. No. 16 Q. We talked earlier about the Federation of 17 State Medical Boards' guidelines for prescribing 18 opioids for the treatment of pain. 19 Do you recall that? 20 A. Yes. 21 Q. Do you recall that the NABP, when you were 22 executive director, endorsed the Federation of State 23 Medical Boards' guidelines? 24 A. Probably, yes. 25</p>

<p style="text-align: right;">Page 146</p> <p>1 (Exhibit 17 was marked for 2 identification.) 3 MS. MILLER: I'm going to hand you what 4 I've marked as Exhibit 17. 5 THE WITNESS: Thank you. 6 MS. MILLER: All right. Exhibit 17 is an 7 article that was written in "Pharmacy Today" in 8 2001. 9 BY MS. MILLER: 10 Q. Is "Pharmacy Today" a publication that is 11 recognized within the practice of pharmacy? 12 A. It's not a referenced journal. It's a 13 trade publication. 14 Q. Okay. You were -- feel free to review the 15 article, if you wish. 16 Looking on Page 2, you were quoted 17 regarding the NABP's endorsement of the pain 18 treatment guidelines from the Federation of State 19 Medical Boards. 20 Do you see that? 21 A. Yes. 22 Q. Do you remember providing an interview 23 with respect to that endorsement? 24 A. Probably, yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 148</p> <p>1 from you? 2 A. No. 3 Q. Okay. The next one states, "Catizone 4 believes the endorsement will have a real effect on 5 pharmacies because, among other things, the 6 guidelines will make it clear that long-term use of 7 opioids and presenting prescription orders for large 8 volumes of opioids should no longer trigger 9 suspicions of abuse." 10 Do you see that? 11 A. Yes. 12 Q. Do you have any reason to disagree that 13 this was a correct attribution of your statement? 14 A. It's not a direct quote, so I think it 15 could have been taken out of context, yes. 16 Q. Okay. Did you -- was it your opinion at 17 the time that the guidelines made it clear that 18 long-term use of opioids and presenting 19 prescriptions for large volumes of opioids should no 20 longer trigger suspicions of abuse? 21 MR. ELSNER: Objection. 22 THE WITNESS: At the time, I would have 23 made sure the qualifiers were in there, within 24 the standards of care and recommended dose and 25 guidelines.</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. ELSNER: Go ahead and take whatever 2 time you need to review it to answer 3 accurately. 4 THE WITNESS: Okay. 5 BY MS. MILLER: 6 Q. Okay. This references that "The 7 guidelines represented a consensus among various 8 pain groups, the regulatory community law 9 enforcement groups, including DEA, on the 10 appropriate use of narcotics for pain management." 11 Do you agree with that statement? 12 A. That was their statement saying these are 13 the people that agreed to it. I don't have anything 14 to say yes or no. 15 Q. Okay. So it references, going down two 16 paragraphs, "By endorsing these guidelines, 17 Carmen Catizone, NABP executive director, told 18 Pharmacy Today, 'We hope to send a message to 19 pharmacies and state boards that appropriate pain 20 management is not something that is punishable and 21 that pharmacists should work with doctors to achieve 22 that,'" correct? 23 A. Correct. 24 Q. Okay. And do you agree that -- do you 25 have any reason to disagree that that was a quote</p>	<p style="text-align: right;">Page 149</p> <p>1 I would not have made a blanket statement 2 like that. 3 BY MS. MILLER: 4 Q. Okay. But you agree with me that it does 5 reference that long-term use of opioids is no 6 longer -- should not be considered a trigger, in and 7 of itself, for abuse? 8 A. That's what the article says but not what 9 I would have said. 10 Q. Okay. Do you agree with me that the 11 Federation of State Medical Boards' guidelines did 12 provide for prescribing of long-term use of opioids? 13 A. I'd have to -- 14 MR. ELSNER: Objection. 15 THE WITNESS: I'd have to see those 16 guidelines to see what the recommendation was 17 and how long that long term was. 18 BY MS. MILLER: 19 Q. We're going to come back. I don't want to 20 take time on this, so we will come back to it. 21 After this article came out, did you issue 22 any type of publication or statement that would let 23 pharmacies know that these statements were 24 inaccurate as to your position? 25 MR. ELSNER: Objection.</p>

<p style="text-align: right;">Page 150</p> <p>1 THE WITNESS: Not directly, but we would</p> <p>2 have released NABP documents that would have</p> <p>3 clarified what I said.</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Okay. If -- what type of NABP documents</p> <p>6 would you have released?</p> <p>7 A. Probably with the release of the</p> <p>8 guidelines to make sure that we informed pharmacists</p> <p>9 they still had to adhere to standards of care and</p> <p>10 recommended dosing, that they still had to follow</p> <p>11 the laws for pharmacists, regardless of what</p> <p>12 prescribers were doing.</p> <p>13 Q. Okay. Sitting here today, are you aware</p> <p>14 of any NABP document that you issued to that effect?</p> <p>15 A. Not aware, but I believe it probably did</p> <p>16 happen, but I'm not aware specifically.</p> <p>17 Q. Okay. During the time that you were</p> <p>18 executive director of NABP, did you or the NABP ever</p> <p>19 issue any publications or guidance documents to</p> <p>20 pharmacists that the FSMB treatment guidelines were</p> <p>21 inappropriate in any way?</p> <p>22 MR. ELSNER: Objection.</p> <p>23 THE WITNESS: If I'm reading this document</p> <p>24 correctly, this article appeared in 2001, well</p> <p>25 before the opioid crisis was known.</p>	<p style="text-align: right;">Page 152</p> <p>1 to pharmacies.</p> <p>2 What we would have done -- and I'm sure</p> <p>3 the document does exist -- we would have sent to all</p> <p>4 the state boards of pharmacy a copy of our comments</p> <p>5 to FSMB, pointing out the areas where we thought</p> <p>6 that the guidelines needed to be revised.</p> <p>7 And that, in a sense, was our disagreement</p> <p>8 with FSMB guidelines. And that would have gone to</p> <p>9 all the states.</p> <p>10 Q. Did the NABP withdraw its endorsement of</p> <p>11 the FSMB guidelines?</p> <p>12 A. When they revised their new documents,</p> <p>13 their new guidelines, I don't remember if we</p> <p>14 endorsed them or not, because this document then</p> <p>15 became moot when FSMB revised.</p> <p>16 Q. Since this document in 2001, have your</p> <p>17 views on the use of opioids for long-term treatment</p> <p>18 changed?</p> <p>19 A. Yes.</p> <p>20 Q. And how have they changed?</p> <p>21 A. After witnessing that approximately</p> <p>22 900,000 people have died from opioid overdoses, my</p> <p>23 view became that many of the prescribing and</p> <p>24 dispensing patterns were contrary to standards of</p> <p>25 care and were actually affecting the public nuisance</p>
<p style="text-align: right;">Page 151</p> <p>1 So I'm sure that after that -- and I know</p> <p>2 that when we commented to FSMB on the</p> <p>3 subsequent revision of their documents, that I</p> <p>4 remember, and that specific document exists</p> <p>5 where NABP disagreed with the guidelines and</p> <p>6 asked FSMB to tighten up the guidelines.</p> <p>7 But in 2001, we didn't have any idea that</p> <p>8 the opioid problem was as big as it was.</p> <p>9 BY MS. MILLER:</p> <p>10 Q. Okay. You mentioned that you asked FSMB</p> <p>11 to revise its guidelines.</p> <p>12 Do you recall whether NABP issued any</p> <p>13 publications to pharmacies advising them that the</p> <p>14 FSMB guidelines were not appropriate?</p> <p>15 MR. ELSNER: Objection.</p> <p>16 THE WITNESS: We would have issued</p> <p>17 pharmacy documents, but we would not have</p> <p>18 directly criticized the FSMB guidelines.</p> <p>19 BY MS. MILLER:</p> <p>20 Q. Okay. The pharmacy documents that you</p> <p>21 would have issued, sitting here today, can you think</p> <p>22 of any particular documents that you did issue to</p> <p>23 pharmacies that would contradict the FSMB</p> <p>24 guidelines?</p> <p>25 A. Yes, and we would not have issued anything</p>	<p style="text-align: right;">Page 153</p> <p>1 and causing people to die and be significantly</p> <p>2 harmed.</p> <p>3 Q. When did you -- approximately when did you</p> <p>4 change your opinion with respect to the use of</p> <p>5 opioids for long-term treatment?</p> <p>6 A. That would have been about 2005-2006, four</p> <p>7 or five years after this statement was made, based</p> <p>8 upon what we were seeing in the states and what the</p> <p>9 states were reporting to us about problems with</p> <p>10 opioids.</p> <p>11 Q. Okay. Similar with other questions, this</p> <p>12 red flag triggers after the number of prescriptions</p> <p>13 for a particular patient exceeds 210 days of supply</p> <p>14 within six months, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you agree with me that the</p> <p>17 prescriptions that the patient received prior to</p> <p>18 exceeding 200 days of supply within six months would</p> <p>19 not have been subject to this red flag?</p> <p>20 MR. ELSNER: Objection.</p> <p>21 THE WITNESS: This particular red flag,</p> <p>22 yes.</p> <p>23 BY MS. MILLER:</p> <p>24 Q. Okay. Did you ask Dr. McCann to exclude</p> <p>25 any prior prescriptions leading up to the point</p>

<p style="text-align: right;">Page 154</p> <p>1 where the prescriptions exceeded 210 days of supply  2 within six months --  3 A. No.  4 Q. -- from his calculations?  5 A. No.  6 Q. Red Flag Number 14 was -- is "A patient  7 was dispensed an opioid and paid in cash," correct?  8 A. Correct.  9 Q. In a lot of -- a number of the examples,  10 and we can feel free to go back through them if we  11 wish, but would you agree with me that a number of  12 times, this red flag is expressed as applying when a  13 patient seeks to pay for an opioid prescription in  14 cash when insurance is otherwise available?  15 THE REPORTER: "Is" or "isn't"?  16 MS. MILLER: "Is."  17 THE WITNESS: I don't believe so.  18 BY MS. MILLER:  19 Q. All right. I'll refer you to Exhibit  20 Number 6.  21 Okay. Exhibit Number 6 on the list of  22 pharmacist red flags, Number 5. Exhibit Number 6.  23 A. All right. What page?  24 Q. The page which has the list of -- the  25 first attachment to the email exchange.</p>	<p style="text-align: right;">Page 156</p> <p>1 May I ask you to turn to Exhibit  2 Number 10?  3 A. Okay.  4 Q. This is the Texas State Board of Pharmacy  5 "Red Flag" Checklist for Pharmacies, correct?  6 A. Yes.  7 Q. About a third of the way down, it  8 references, "People pay with cash or credit card  9 more often than through insurance," correct?  10 A. Correct.  11 Q. Okay. So this one is identifying  12 circumstances in addition to paying with cash or  13 credit card, correct?  14 MR. ELSNER: Objection.  15 THE WITNESS: Is the answer [sic] does it  16 include cash and other circumstances, then the  17 answer is "yes."  18 BY MS. MILLER:  19 Q. Okay. So would you agree with me that the  20 red flag in different contexts has been stated  21 differently than what you have in your red flag,  22 which is that the patient was dispensed an opioid  23 and paid in cash? It does not make any reference to  24 "other circumstances," correct?  25 MR. ELSNER: Objection.</p>
<p style="text-align: right;">Page 155</p> <p>1 Number 5, "Large percentage of controlled  2 substances are paid for in cash or patient uses  3 insurance to pay for noncontrolled substances but  4 then pays for controlled substances with cash when  5 insurance is available."  6 Do you see that?  7 A. Uh-huh.  8 Q. Okay.  9 A. Yes.  10 Q. So this one includes -- includes both  11 iterations, correct?  12 A. Correct.  13 Q. Okay. And it refers to -- on the DEA list  14 in the exhibits, if you turn to Ruth Carter's  15 presentation where she identifies common red flags,  16 if you look on Page 11 of her presentation, it  17 states, "Cash payments in combination with other  18 circumstances."  19 Do you see that?  20 A. Yes.  21 Q. Okay. So in that case, she's referencing  22 not paying in cash alone but also in combination  23 with other circumstances, correct?  24 A. I'm not sure, but that's what it says.  25 Q. That's what it says.</p>	<p style="text-align: right;">Page 157</p> <p>1 THE WITNESS: It does not. It includes  2 the same thing that Albertsons says in its  3 policy, cash prescriptions or a patient that  4 asks to pay cash rather than insurance.  5 So it encompasses all of those situations  6 without qualifying.  7 BY MS. MILLER:  8 Q. Okay. So that's my question.  9 In some circumstances, it's referred to as  10 "paid with cash." Other circumstances it's "paid  11 with cash when insurance was available or when other  12 circumstances exist," correct?  13 A. Correct.  14 Q. Would you agree with me that reasonable  15 pharmacists could disagree as to whether --  16 A. Bless you.  17 Q. -- a red flag is triggered, based just on  18 whether the patient paid in cash or whether there  19 were other circumstances available?  20 A. Again, I would say the purpose of the red  21 flag, if a patient paid cash, that would be a  22 trigger.  23 Would pharmacists disagree that that  24 should be a trigger and there should be other  25 circumstances?</p>



<p style="text-align: right;">Page 158</p> <p>1 I'm sure that some pharmacists would say</p> <p>2 that as well.</p> <p>3 Q. Okay. And that would be pharmacists,</p> <p>4 within the exercise of their professional judgment,</p> <p>5 could have that disagreement?</p> <p>6 MR. ELSNER: Objection.</p> <p>7 THE WITNESS: Again, it depends on the</p> <p>8 prescription. It depends on the other</p> <p>9 circumstances.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. So in -- when you say "it depends on the</p> <p>12 prescription," that means there are other</p> <p>13 circumstances that the patient or that the</p> <p>14 prescriber -- sorry, the pharmacist is evaluating,</p> <p>15 correct?</p> <p>16 MR. ELSNER: Objection.</p> <p>17 THE WITNESS: Beyond -- beyond just</p> <p>18 whether it's cash or insurance, the other</p> <p>19 circumstance. But the cash would automatically</p> <p>20 trigger a response.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Okay. So is it your -- is it your opinion</p> <p>23 that a pharmacist who doesn't consider just the</p> <p>24 payment of cash without other circumstances as a red</p> <p>25 flag, is that contrary to the pharmacy standard of</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Okay. Go back to Ruth Carter's.</p> <p>2 A. With the Texas reference, Exhibit 10 that</p> <p>3 you just referenced, people pay with cash or credit</p> <p>4 card more often than through insurance.</p> <p>5 So there's the order.</p> <p>6 Q. Okay. That's cash or credit card.</p> <p>7 Exhibit Number 8, Ruth Carter's</p> <p>8 presentation, as we went through, "Cash payments in</p> <p>9 combination with other circumstances," correct?</p> <p>10 A. That was what Ruth said. That was just</p> <p>11 one presentation.</p> <p>12 Q. Okay. My question is, is this recitation</p> <p>13 of the red flag, cash payments in combination with</p> <p>14 other circumstances, contrary to the pharmacy</p> <p>15 standard of care?</p> <p>16 MR. ELSNER: Objection.</p> <p>17 THE WITNESS: I'm -- I'm confused, so I</p> <p>18 apologize.</p> <p>19 I don't -- there are two circumstances --</p> <p>20 one circumstance that would trigger is the</p> <p>21 patient pays cash.</p> <p>22 What would add additional credibility or</p> <p>23 validity to the red flag or problem with the</p> <p>24 red flag, not validity, is if they already had</p> <p>25 existing insurance and there was no reason to</p>
<p style="text-align: right;">Page 159</p> <p>1 care?</p> <p>2 MR. ELSNER: Objection.</p> <p>3 THE WITNESS: I'm just having trouble</p> <p>4 answering that as comparing to what happens in</p> <p>5 practice.</p> <p>6 So I would say to ignore that red flag</p> <p>7 would be a concern of the pharmacist to</p> <p>8 investigate all the other information to make</p> <p>9 sure that that red flag was resolved.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. Okay. And when you say "that red flag,"</p> <p>12 you're talking about just the fact that the customer</p> <p>13 paid in cash, without -- and not in reference to</p> <p>14 other circumstances around the prescription?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So the prescription -- for the red</p> <p>17 flags that have been identified in these other</p> <p>18 sources that states that the red flag is when the</p> <p>19 patient pays in cash with the presence of other</p> <p>20 circumstances, is it your opinion that that</p> <p>21 recitation of a red flag is contrary to the pharmacy</p> <p>22 standard of care?</p> <p>23 A. I think the other references were "cash or</p> <p>24 cash with other circumstances." It wasn't just an</p> <p>25 exclusive "cash with other circumstances."</p>	<p style="text-align: right;">Page 161</p> <p>1 actually pay for cash.</p> <p>2 That would just further support the red</p> <p>3 flag, is the best way I can respond.</p> <p>4 MR. ELSNER: When you're at a good</p> <p>5 stopping point, I'd like to take break.</p> <p>6 MS. MILLER: Sure. We should have lunch</p> <p>7 coming in, too, if we want to take a quick</p> <p>8 lunch break. I want to make sure it's here.</p> <p>9 MR. ELSNER: We can talk to him about</p> <p>10 that. That's fine.</p> <p>11 MS. MILLER: Okay.</p> <p>12 THE VIDEOGRAPHER: Off the record?</p> <p>13 MS. WHITE: Off or no?</p> <p>14 MS. MILLER: Off the record, yes.</p> <p>15 THE VIDEOGRAPHER: Off the record at</p> <p>16 12:03.</p> <p>17 (Whereupon, a recess was taken</p> <p>18 from 12:03 p.m. to 12:42 p.m.)</p> <p>19 THE VIDEOGRAPHER: Back on the record at</p> <p>20 12:42.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. I'm going to turn to your specific</p> <p>23 opinions relating to Albertsons. At Page 64 of your</p> <p>24 report, you offer opinions regarding Albertsons'</p> <p>25 policies and procedures.</p>

<p style="text-align: right;">Page 162</p> <p>1       Actually, backing up, with respect to your</p> <p>2 entire report, would I be correct in understanding</p> <p>3 that all of the bases for your opinions with respect</p> <p>4 to Albertsons are included within your report?</p> <p>5       A. Yes, unless something comes up in the</p> <p>6 deposition.</p> <p>7       Q. Okay. Your understanding of the facts</p> <p>8 upon which you based all your opinions regarding</p> <p>9 Albertsons is written in your report, correct?</p> <p>10      A. Correct.</p> <p>11      Q. Okay. To the extent that your</p> <p>12 understanding of facts pertaining to Albertsons is</p> <p>13 proven to be inaccurate, would you agree that that</p> <p>14 could have an impact on your conclusions in this</p> <p>15 case?</p> <p>16      MR. ELSNER: Objection.</p> <p>17      THE WITNESS: Is the question, if my</p> <p>18 assessment of the facts were incorrect,</p> <p>19 would -- that would change my report?</p> <p>20 BY MS. MILLER:</p> <p>21      Q. Would that change your opinion? Would you</p> <p>22 agree that that could change your opinions?</p> <p>23      Your opinions are based on, as you've</p> <p>24 stated, your understanding of the facts.</p> <p>25      A. Right.</p>	<p style="text-align: right;">Page 164</p> <p>1       THE WITNESS: That would be an almost</p> <p>2 impossible hypothetical, because every single</p> <p>3 fact would have to be wrong. So I'd still have</p> <p>4 to say it wouldn't change my conclusions,</p> <p>5 so ...</p> <p>6 BY MS. MILLER:</p> <p>7      Q. So you can't conceive of a fact that would</p> <p>8 change your opinion in this case?</p> <p>9      A. No.</p> <p>10     Q. Okay. Okay. So turning to Page 64,</p> <p>11 starting in the section Albertsons' Policies and</p> <p>12 Procedures, you have provided opinions with respect</p> <p>13 to Albertsons' policies in 2013, if you look on</p> <p>14 Page 65.</p> <p>15     And then turning to Page 67, you have</p> <p>16 opinions regarding Albertsons' 2016 pharmacy</p> <p>17 policies and procedures, and then the next paragraph</p> <p>18 is 2018 policies and procedures manuals.</p> <p>19     Do you see that?</p> <p>20     A. Yes.</p> <p>21     Q. Okay. Am I correct in understanding that</p> <p>22 you have not expressed any opinions with respect to</p> <p>23 any Albertsons policies after 2018? So the policies</p> <p>24 and procedure manuals from 2019 or later.</p> <p>25     A. The only manuals I commented on were what</p>
<p style="text-align: right;">Page 163</p> <p>1      Q. And my question is, if that understanding</p> <p>2 of the facts is proven to be inaccurate, would you</p> <p>3 agree that that could have an impact on what your</p> <p>4 ultimate conclusions are in this case?</p> <p>5      A. I don't think it would change the ultimate</p> <p>6 conclusion because I didn't -- I don't think I</p> <p>7 misunderstood the facts, so I don't think it would</p> <p>8 change the conclusion.</p> <p>9      MS. MILLER: What is going on with my --</p> <p>10 can we pop off for a second?</p> <p>11      THE VIDEOGRAPHER: Off the record at</p> <p>12 12:44.</p> <p>13             (Whereupon, a recess was taken</p> <p>14 from 12:44 p.m. to 12:46 p.m.)</p> <p>15      THE VIDEOGRAPHER: Back on the record at</p> <p>16 12:46.</p> <p>17 BY MS. MILLER:</p> <p>18      Q. So my question was not whether -- whether</p> <p>19 your understanding of the facts was incorrect.</p> <p>20      My question was, if it turns out that your</p> <p>21 understanding -- I'm asking a hypothetical -- if it</p> <p>22 turns out that your understanding of the facts are</p> <p>23 inaccurate, would you agree that that could impact</p> <p>24 the ultimate conclusions you have in this case?</p> <p>25      MR. ELSNER: Objection.</p>	<p style="text-align: right;">Page 165</p> <p>1 were provided to me by legal counsel in reference to</p> <p>2 my report.</p> <p>3      Q. All right. Starting -- you mentioned</p> <p>4 prior to 2013, back on Page 64, Albertsons had no</p> <p>5 pharmacy policies or procedures that addressed</p> <p>6 identifying or resolving red flags for controlled</p> <p>7 substance prescriptions, correct?</p> <p>8      A. Correct.</p> <p>9      Q. Do you know what Albertsons' policies</p> <p>10 consisted of with respect to appropriate dispensing</p> <p>11 of controlled substances prior to 2013?</p> <p>12      A. I did not review a policy manual prior to</p> <p>13 2013.</p> <p>14      Q. Am I correct that your knowledge of</p> <p>15 Albertsons' policies regarding appropriate</p> <p>16 dispensing of controlled substances prior to 2013 is</p> <p>17 based on the citations you reference in your report</p> <p>18 in footnote 246?</p> <p>19      A. In regard to the policies, yes.</p> <p>20      Q. You make comments regarding Albertsons'</p> <p>21 training. This is a little bit on Page 64 and in</p> <p>22 the following pages.</p> <p>23      In particular, on Page 64, middle of the</p> <p>24 document, you make reference to an internal</p> <p>25 presentation which discussed Albertsons' response to</p>

<p style="text-align: right;">Page 166</p> <p>1 the opioid crisis, Albertsons identified basic 2 efforts which had not yet been implemented by 3 July 29, 2019, correct? 4 A. Correct. 5 Q. Do you know what Albertsons' training 6 consisted of with respect to appropriate dispensing 7 of controlled substances prior to 2013? 8 A. Based on the information I reviewed, I 9 could not find any documentation of training prior 10 to that. 11 Q. Do you know what Albertsons' training 12 consisted of between 2013 and 2019? 13 A. Based on the information I reviewed and 14 documented in my report, it involved a few mailings 15 to pharmacists, responsibility of the pharmacy 16 manager to communicate to pharmacists. 17 But there was no follow-up or no 18 documentation if that information was actually 19 presented to the pharmacists. 20 Q. And what is that -- your conclusion that 21 there was no follow-up on what was presented to the 22 pharmacists, what is that based on? 23 A. Depositions that I read as part of the 24 preparation for this. 25 Q. You have expressed criticism that</p>	<p style="text-align: right;">Page 168</p> <p>1 (Exhibit 18 was marked for 2 identification.) 3 MS. MILLER: I hand you what I'm marking 4 as Exhibit 18. 5 BY MS. MILLER: 6 Q. Okay. So this is the 2013 email that I 7 believe you referenced which outlined a list of red 8 flags that was provided to pharmacies, correct? 9 A. I don't think I referenced an email. I 10 thought I referenced the policy and procedure. 11 Q. So with respect to 2013, when I asked you 12 about training, you referenced mailings to 13 pharmacists. 14 A. Oh. 15 Q. Is this what you were referring to? 16 A. I don't know. I can't identify it. 17 Q. Okay. This -- in your report, Page 64 on 18 to Page 65, you state, "The first incarnation of 19 Albertsons' guidance to its pharmacists involving 20 red flags for controlled substance prescriptions 21 took the form of a two-page sheet entitled 22 'Appropriate Dispensing of Controlled Substances' in 23 2013," correct? 24 A. Yes. 25 Q. And does this appear to be that document?</p>
<p style="text-align: right;">Page 167</p> <p>1 Albertsons first included a list of red flags in its 2 formal pharmacy policies and procedures document in 3 2016, correct? 4 A. What page are we on? 5 Q. I am on -- that's Page 67, I believe. 6 A. 26, that first paragraph? 7 Q. Yes. 8 A. Yes. 9 Q. Okay. You do make reference to some red 10 flag training or materials that Albertsons had 11 provided prior to 2016. 12 Is -- your criticism of the 2016 policy is 13 that Albertsons did not list, specifically list red 14 flags within the policies documents, but, instead, 15 those were contained in training documents? 16 Do you have a criticism with that? 17 MR. ELSNER: Objection. 18 THE WITNESS: No, I think my statement is 19 the report that it introduced the concept of 20 red flags, but it did not have any useful 21 guidance or requirements for pharmacists to 22 detect and resolved red flags, would be my 23 comment on that document. 24 MS. MILLER: Okay. 25</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Yes, it does. 2 Q. Okay. And you expressed the conclusion 3 that this document did not provide useful guidance 4 for pharmacists; is that correct? 5 A. Correct. 6 Q. Okay. And then what is the basis for your 7 opinion that this document did not provide useful 8 guidance to pharmacists? 9 A. Again, in my report, that beyond direction 10 for pharmacists to exercise professional judgment, 11 there's no requirement for pharmacists to take 12 specific actions or to investigate when encountering 13 any red flags, nor is there any requirement for 14 pharmacists to utilize any specific resources. 15 That was my comment on the document. 16 Q. Okay. So the fact that this document 17 doesn't require them to take any, in particular, 18 action on a red flag is the basis for your 19 conclusion that this is not useful guidance? 20 A. The direction to take action, how to take 21 action, and how to document that action, is what my 22 comment would be based upon. 23 Q. Okay. What should this document have said 24 with respect to how to document that investigation? 25 A. Based on the information and based upon</p>

<p style="text-align: right;">Page 170</p> <p>1 what the requirements are, I would have written a 2 document to say, These are red flags. These red 3 flags have been identified by the DEA and other law 4 enforcement agencies. 5 When these red flags occur, the pharmacist 6 needs to so identify these red flags and resolve 7 those red flags and document that resolution, and 8 then establish a central place for those notes and 9 for that information to take place, rather than 10 listing what could be or might be and saying it's up 11 to you to make that decision. 12 The pharmacist, for these red flags, just 13 like any other standard of care requirement, doesn't 14 have the discretion to decide to follow it or not 15 follow it. 16 Q. Okay. So when the document says, on the 17 first page, "If one or more red flags exist, the 18 pharmacist must exercise professional judgment in 19 deciding whether to dispense and use available 20 resources as necessary and appropriate," is it your 21 conclusion that Albertsons is telling the pharmacist 22 that they have discretion to determine whether 23 something is a red flag or not? 24 A. No, I think what it's saying there is, in 25 situations where the pharmacist must take action,</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. All right. You would agree with me that 2 this document is not a policy, correct? This 3 document is a PowerPoint presentation, correct? 4 A. Correct, it's a PowerPoint presentation. 5 Q. Okay. I mean, you have some distinctions 6 in your report between formal policies and other 7 documents, correct? 8 A. For Albertsons or for -- 9 Q. For Albertsons, yes. You make reference 10 to provisions of Albertsons' formal policies as 11 distinguished from other documents that Albertsons 12 may have issued, correct? 13 A. Correct, correct. 14 Q. Okay. And I just wanted to clarify. 15 This document is not a formal policy, 16 correct? 17 A. It's a PowerPoint presentation. I'd have 18 to review it again to see whether it talks about the 19 policy, but it's just a PowerPoint presentation. 20 Q. Correct. Okay. If you look at the cover 21 page, this document is dated July 21st, 2014, in the 22 cover email. 23 I turn you to Page 13 of the presentation. 24 And it references investigation. And it outlines 25 different factors, identifying bad actors, external</p>
<p style="text-align: right;">Page 171</p> <p>1 Albertsons is saying you don't have any 2 responsibility or requirement to do so, just do what 3 you please. And that's not correct. 4 Q. Okay. 5 (Exhibit 19 was marked for 6 identification.) 7 MS. MILLER: I hand you what I've marked 8 as Exhibit 19. 9 THE WITNESS: Thank you. 10 MS. MILLER: I'm sorry, there's a cover 11 page to that. Thank you. 12 MR. ELSNER: Sorry, can I get one? 13 MS. MILLER: Oh, I'm sorry. 14 MR. ELSNER: That's okay. Thank you. 15 BY MS. MILLER: 16 Q. Did you review this document in preparing 17 your opinions? 18 A. Yes, I did. 19 Q. Okay. In fact, you referenced this 20 document earlier. 21 When we were talking about the geographic 22 limits, you commented that Albertsons had in its 23 policies a red flag that was based on 15- to 20-mile 24 geographic distance, correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 173</p> <p>1 diversion, analyzing data for red flags, and then 2 internal diversion. 3 And it continues on, and it talks about 4 red flags following on the next page, correct? 5 A. Yes. 6 Q. Okay. As you reviewed this, did you have 7 an understanding that this document reflected a 8 training session that pertained to, among other 9 things, red flags? 10 A. I knew it was in use for training, but I 11 wasn't aware of what the specific training session 12 was, so ... 13 Q. Okay. In forming your opinions as to 14 whether Albertsons had conducted training of its 15 pharmacists with respect to identification and 16 resolution of red flags, did you consider that 17 document? 18 A. Yes. 19 Q. Okay. When you -- you had offered the 20 opinion that Albertsons had no follow-up with 21 respect to its pharmacy mailings. 22 Would you -- would this PowerPoint 23 presentation, as presented to pharmacists, 24 contradict that opinion that there was no follow-up 25 by Albertsons?</p>

<p style="text-align: right;">Page 174</p> <p>1 MR. ELSNER: Objection.</p> <p>2 THE WITNESS: No, not specifically, and</p> <p>3 no, in general.</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Okay. So when you said there was no</p> <p>6 follow-up with respect to its mailings regarding red</p> <p>7 flags, what did you mean?</p> <p>8 A. So if you turn to Page 4 of the document,</p> <p>9 when Albertsons conducted its own field evaluation</p> <p>10 results, it only had a 22 percent pass rate. And it</p> <p>11 then broke down by division who the strong</p> <p>12 performers were based upon percentage. And, again,</p> <p>13 those percentages were very low.</p> <p>14 That was an indication to me, a hard data</p> <p>15 indication, that training wasn't happening within</p> <p>16 Albertsons. And then in subsequent depositions,</p> <p>17 there was discussion about whether or not they were</p> <p>18 able to do the training, and the fact that they</p> <p>19 weren't able to do the training, and that many of</p> <p>20 the pharmacists still didn't have the information</p> <p>21 they needed or didn't -- weren't aware of certain</p> <p>22 things.</p> <p>23 And that was the basis for my opinion.</p> <p>24 Q. Okay. There's a whole lot of things in</p> <p>25 that answer. I'm going to start with the reference</p>	<p style="text-align: right;">Page 176</p> <p>1 receive a pass rate, would that be inconsistent with</p> <p>2 your review of the documents?</p> <p>3 MR. ELSNER: Objection.</p> <p>4 THE WITNESS: I thought there was a place</p> <p>5 that said they could not do well in certain</p> <p>6 areas but there were certain areas that they</p> <p>7 needed 100 percent passage.</p> <p>8 But, again, I'm just recalling. I'd have</p> <p>9 to look at those documents again.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. Okay. Do you have any understanding as to</p> <p>12 whether the field evaluation results had a direct</p> <p>13 connection to evaluation of red flags for</p> <p>14 dispensing?</p> <p>15 A. I believe it did, based upon the fact that</p> <p>16 the first couple pages said they did controlled</p> <p>17 substance monitoring. So I would believe that part</p> <p>18 of the monitoring would involve red flags.</p> <p>19 Q. Okay. That's an assumption on your part,</p> <p>20 correct?</p> <p>21 MR. ELSNER: Objection.</p> <p>22 THE WITNESS: That's what the information</p> <p>23 told me, yes.</p> <p>24 BY MS. MILLER:</p> <p>25 Q. Okay. In your review of depositions in</p>
<p style="text-align: right;">Page 175</p> <p>1 to these field evaluation results.</p> <p>2 Do you know what was included in these</p> <p>3 field evaluations?</p> <p>4 A. I believe it was the checklists that they</p> <p>5 used when they would do subsequent or sometimes</p> <p>6 periodic reviews of the pharmacies, and, in fact,</p> <p>7 they were also supposed to do a mock DEA evaluation</p> <p>8 that never was able to take place that was supposed</p> <p>9 to be more stringent than these regional or periodic</p> <p>10 reviews.</p> <p>11 Q. Okay. Do you know what was required for a</p> <p>12 pharmacy to receive a pass result in these field</p> <p>13 evaluations?</p> <p>14 A. To the best of my recollection, there was</p> <p>15 a set of criteria. And if they failed certain</p> <p>16 criteria, they wouldn't get a pass.</p> <p>17 But I can't recall the specifics of that.</p> <p>18 Q. Okay. Do you have any understanding as to</p> <p>19 what type of score was necessary for a pharmacy to</p> <p>20 receive a pass rate?</p> <p>21 A. I thought in the materials I read that</p> <p>22 they wanted a score of somewhere above 75 percent,</p> <p>23 but I can't say that for sure.</p> <p>24 Q. Okay. If I were to tell you that it</p> <p>25 actually required a score of 100 percent in order to</p>	<p style="text-align: right;">Page 177</p> <p>1 this case, did you receive information as to whether</p> <p>2 Albertsons did annual training with its pharmacists</p> <p>3 regarding identifying and resolving red flags?</p> <p>4 A. I did not see any of that in the</p> <p>5 materials.</p> <p>6 Q. Okay. Do you know one way or the other</p> <p>7 whether Albertsons did annual training with its</p> <p>8 pharmacists regarding identifying and resolving red</p> <p>9 flags?</p> <p>10 A. I did not recall seeing any of that in the</p> <p>11 materials I reviewed.</p> <p>12 Q. Okay. And the materials you reviewed</p> <p>13 consisted of two depositions, correct?</p> <p>14 Mr. Provenzano and Ms. Covaci?</p> <p>15 MR. ELSNER: Objection.</p> <p>16 THE WITNESS: Whatever else -- I'm sorry.</p> <p>17 And whatever was referenced on the other</p> <p>18 sheet, those are additional depositions.</p> <p>19 BY MS. MILLER:</p> <p>20 Q. Okay. Do you -- in your review of those</p> <p>21 depositions, do you have any knowledge or</p> <p>22 information as to what resources Albertsons provided</p> <p>23 its pharmacists with respect to identifying and</p> <p>24 resolving red flags?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 178</p> <p>1 Q. And what was that?</p> <p>2 A. In the depositions, there were a couple of</p> <p>3 factors that stood out.</p> <p>4 One, situations were reported back to</p> <p>5 Albertsons corporate of fraudulent prescriptions or</p> <p>6 problems with prescribers. And it would take three</p> <p>7 or four months for Albertsons to get back and look</p> <p>8 at that issue and report back to the pharmacy</p> <p>9 manager.</p> <p>10 The other was the information that</p> <p>11 corporate had in regard to dispensing data that was</p> <p>12 reviewed by corporate personnel but never shared</p> <p>13 back to the individual pharmacists. And that's</p> <p>14 directly mentioned in those depositions.</p> <p>15 Q. In reviewing documents related to</p> <p>16 Albertsons, did you have any understanding as to</p> <p>17 what information was available in Albertsons'</p> <p>18 corporate portals for pharmacists with education</p> <p>19 regarding identifying and resolving red flags?</p> <p>20 MR. ELSNER: Objection.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MS. MILLER:</p> <p>23 Q. Okay. In your review of documents, did</p> <p>24 you have any understanding as to whether Albertsons</p> <p>25 provided its pharmacists with the NABP video that we</p>	<p style="text-align: right;">Page 180</p> <p>1 of recordkeeping, documentation.</p> <p>2 And then the fourth presentation was by a</p> <p>3 member or representative of the local Board of</p> <p>4 Pharmacy to talk to pharmacists about what the</p> <p>5 requirements were in that state.</p> <p>6 So I worked with all of them on the</p> <p>7 content and on the program and training for the</p> <p>8 pharmacists.</p> <p>9 Q. Do you have any -- have you retained any</p> <p>10 copies of those presentations?</p> <p>11 A. I personally haven't. I believe NABP may</p> <p>12 have those.</p> <p>13 Q. Okay. Those training programs that you</p> <p>14 referenced, would you refer -- would you consider</p> <p>15 those to be reliable training materials for</p> <p>16 pharmacists for identifying and resolving red flags?</p> <p>17 A. Again, part of the information that would</p> <p>18 be required.</p> <p>19 Q. Okay. In cases against -- in the prior</p> <p>20 MDL case, you testified on, Walgreens, Walmart, and</p> <p>21 CVS were defendants in that case, correct, in the</p> <p>22 Ohio MDL case?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Okay. And then you've also testified in a</p> <p>25 case in San Francisco, in which Walgreens was a</p>
<p style="text-align: right;">Page 179</p> <p>1 discussed earlier today?</p> <p>2 A. Nothing indicated that that occurred.</p> <p>3 Q. Okay. Have you ever designed a training</p> <p>4 program for pharmacists regarding identifying and</p> <p>5 resolving red flags?</p> <p>6 A. Yes.</p> <p>7 Q. And what was that?</p> <p>8 A. I was a part-time faculty at Quantico, in</p> <p>9 DEA headquarters for FBI agents and DEA agents, and</p> <p>10 I put together presentations quarterly for DEA</p> <p>11 agents, FBI agents, and pharmacists that were</p> <p>12 involved in investigating diversion and red flags.</p> <p>13 Also, the program that you referenced</p> <p>14 earlier, the PDAC program, the Pharmacy Diversion</p> <p>15 Awareness, that Ruth Carter was a part of, I worked</p> <p>16 with the DEA to design that program, and it actually</p> <p>17 involved four different presentations.</p> <p>18 One presentation by William Winsley, who</p> <p>19 is the former executive director of the Ohio Board</p> <p>20 of Pharmacy, past president of NABP. I worked with</p> <p>21 Bill to design that program.</p> <p>22 The second was a presentation by</p> <p>23 Ruth Carter or another member of the DEA.</p> <p>24 The third presentation was from another</p> <p>25 DEA person but from a different perspective in terms</p>	<p style="text-align: right;">Page 181</p> <p>1 defendant, correct?</p> <p>2 A. Correct.</p> <p>3 Q. In that prior testimony, you had opined</p> <p>4 that they're dispensing data information systems</p> <p>5 were not adequate, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. In those cases, you were asked</p> <p>8 questions about whether you were aware of any other</p> <p>9 pharmacy chain that had the type of information</p> <p>10 system that you claimed those pharmacies should have</p> <p>11 had.</p> <p>12 And in the answer to that question, you</p> <p>13 answered that Albertsons had a system, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 A. I testified Albertsons had information</p> <p>17 available but not a system.</p> <p>18 Q. Okay. What do you mean by that?</p> <p>19 A. If you turn to Page 75 on my report, I</p> <p>20 referenced that again.</p> <p>21 On Page 75, I think it's the second full</p> <p>22 paragraph under "Albertsons failed."</p> <p>23 "Based upon my review of documents and</p> <p>24 testimony, Albertsons possessed dispensing data and</p> <p>25 other information collected at a corporate level.</p>

<p style="text-align: right;">Page 182</p> <p>1 Albertsons had access to extensive and detailed 2 prescription data and other information. For 3 example, Albertsons collects dispensing data and 4 stores in its centralized data warehouses responses 5 and documents from defendant to indicate that 6 Albertsons also had access to third-party data." 7 That's the information I was referring to 8 in the prior testimony. 9 Q. Okay. And you had testified that you had 10 access to Albertsons data in your role as a 11 consultant, correct? 12 A. Not to their data. 13 Q. What did you have access to? 14 A. A former client of ours has a medication 15 error reporting system and also a patient care 16 organization reporting system. 17 And in that context, we were giving a 18 presentation about the data that Albertsons had that 19 could be integrated into the medication error 20 reporting system and the types of reports that could 21 be generated, which included the diversionary 22 reports that I mentioned. 23 But at no time did I actually see the data 24 or see anything that was proprietary to Albertsons. 25 Q. Okay.</p>	<p style="text-align: right;">Page 184</p> <p>1 West Virginia and in Ohio are using dispensing 2 data in a way that I mentioned." 3 Correct? 4 A. Yes, sir -- yes, ma'am. 5 Q. All right. As you sit here today, are 6 you -- is your testimony different today than what 7 it was? 8 A. No. 9 MR. ELSNER: Objection. 10 BY MS. MILLER: 11 Q. Okay. So when you say "Albertsons is 12 using dispensing data in the way that you say 13 Walgreens is required to," what do you mean by that? 14 A. So if you read, again, if we go back to 15 that answer on Page -- on Line 19, "Based upon my 16 work with Albertsons Pharmacy and some work with 17 pharmacy networks operating in North Carolina," the 18 reference now goes back to, "I would say they're 19 using dispensing dated as well as independent 20 pharmacies that I've interacted with in 21 West Virginia." 22 If you go on, the question is, "When did 23 you see the Albertsons system that you now say uses 24 dispensing data in the way that they are supposed 25 to?"</p>
<p style="text-align: right;">Page 183</p> <p>1 (Exhibit 20 was marked for 2 identification.) 3 MS. MILLER: I hand you what I've marked 4 as Exhibit 20. 5 BY MS. MILLER: 6 Q. This is an excerpt from the transcript of 7 your deposition in the San Francisco case. 8 A. Uh-huh. 9 Q. And if you turn to the second page of this 10 document, which is Page 59 of the transcript, you 11 will see a question starting on Line 12: 12 "Based on all of your expert work and your 13 35 years at the NABP, can you now identify any 14 pharmacy in the country that uses dispensing 15 data in the ways that you now say Walgreens is 16 required to?" 17 Do you see that? 18 A. Uh-huh. 19 Q. And your answer was: 20 "Based on my work with Albertsons Pharmacy 21 and some work with some of the CPSEN [sic] 22 network pharmacies that are operating in 23 North Carolina, I would say that they are using 24 dispensing data as well as independent 25 pharmacies that I've interacted with in</p>	<p style="text-align: right;">Page 185</p> <p>1 There was an objection. 2 I said, "There is -- just prior to me 3 testifying four months ago," again, further on -- 4 answer on Line 17, "proprietary information," "the 5 process and that for another client." 6 [As read]: "We were asked to look at 7 medication error reporting systems and whether or 8 not the medication report error system would 9 integrate with dispensing data and how those 10 dispensing data systems would help trigger any 11 diversion problem, in all well medication errors 12 then should be documented and recorded, and that was 13 the substance of my work in that regard, sir." 14 Q. Okay. But based on that work, you 15 expressed the opinion in this case that Albertsons 16 was using dispensing data in a way that you thought 17 Walgreens was -- should have been using it? 18 MR. ELSNER: Objection. 19 THE WITNESS: And the fact that they had 20 it, they were using it at the corporate level, 21 and not sharing it then with their pharmacies 22 or pharmacists. 23 BY MS. MILLER: 24 Q. But you didn't say that in this 25 deposition.</p>

<p style="text-align: right;">Page 186</p> <p>1 MR. ELSNER: Objection.</p> <p>2 THE WITNESS: Yeah, I did too.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. That Albertsons was not using the data?</p> <p>5 A. Yes, I did.</p> <p>6 Q. In your deposition in San Francisco --</p> <p>7 A. Oh.</p> <p>8 Q. -- did you testify that Albertsons was</p> <p>9 not, in fact, using dispensing data in the way that</p> <p>10 it should be required to?</p> <p>11 A. I think the clarification in my answer</p> <p>12 indicated that it was for medication error purposes,</p> <p>13 and I wasn't asked whether or not Albertsons wasn't</p> <p>14 using it.</p> <p>15 They asked, "Do you know of any other</p> <p>16 pharmacy that has this data and could use the data</p> <p>17 as the way Walgreens should?"</p> <p>18 And that was my response.</p> <p>19 Q. Okay. The question is actually whether</p> <p>20 Albertsons uses that dispensing data.</p> <p>21 MR. ELSNER: Objection.</p> <p>22 THE WITNESS: And I said, "That's</p> <p>23 proprietary," "I've signed," "but I can explain</p> <p>24 the process."</p> <p>25 I didn't say "yes" to that question,</p>	<p style="text-align: right;">Page 188</p> <p>1 and pharmacies with high dispensing totals of</p> <p>2 opioids, hydrocodone, oxycodone, and who were</p> <p>3 the highest prescribers of medication.</p> <p>4 That information was provided to</p> <p>5 Albertsons corporate. And based upon the</p> <p>6 information that was in the materials I</p> <p>7 reviewed, it said it was never shared with the</p> <p>8 pharmacists at those stores that would have</p> <p>9 been interacting with those prescribers.</p> <p>10 And that there were action plans that were</p> <p>11 to be developed for certain stores, but there</p> <p>12 was no follow through, that I could find, on</p> <p>13 the action plans or what actions were taken as</p> <p>14 regarding that data.</p> <p>15 That's my understanding of how it was used</p> <p>16 and collected.</p> <p>17 BY MS. MILLER:</p> <p>18 Q. Okay. Do you know what program Albertsons</p> <p>19 had access to from IQVIA or IMS, which is the same</p> <p>20 company?</p> <p>21 A. I think they were in Mr. Provenzano's</p> <p>22 deposition. He described the various data</p> <p>23 agreements and the data that Albertsons sells from</p> <p>24 its patient records and pharmacy to these</p> <p>25 third-party firms, as well as, I think, to some</p>
<p style="text-align: right;">Page 187</p> <p>1 ma'am. I did not answer affirmatively to that</p> <p>2 question.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. Okay. So sitting here today, is it your</p> <p>5 opinion that Albertsons does not use dispensing data</p> <p>6 to evaluate controlled substance dispensing?</p> <p>7 A. Not at the pharmacy level, and not</p> <p>8 implementing that data as they should.</p> <p>9 Q. Okay. You agree with me that Albertsons</p> <p>10 does utilize dispensing data to evaluate controlled</p> <p>11 substance prescribing at the corporate level?</p> <p>12 A. I think the data is available. I think</p> <p>13 it's reviewed by a limited number of individuals.</p> <p>14 And I'm not sure it's actually implemented or put</p> <p>15 into use for any meaningful purposes.</p> <p>16 Q. How is the data -- how is the data</p> <p>17 utilized and put into use?</p> <p>18 Do you have an understanding as to how</p> <p>19 Albertsons uses that data?</p> <p>20 MR. ELSNER: Objection.</p> <p>21 THE WITNESS: So based, again, upon the</p> <p>22 information in depositions, Albertsons received</p> <p>23 significant amounts of data from third-party</p> <p>24 sources. I think it was IQVIA and IMS.</p> <p>25 In those data, they identified prescribers</p>	<p style="text-align: right;">Page 189</p> <p>1 manufacturers.</p> <p>2 But I don't know beyond that what was in</p> <p>3 the deposition, what it consisted of.</p> <p>4 Q. Okay. Do you understand what tools that</p> <p>5 Albertsons uses in -- from IQVIA to help evaluate</p> <p>6 controlled substance dispensing in its pharmacies?</p> <p>7 A. The reports that I mentioned that</p> <p>8 Albertsons had access to that identified stores that</p> <p>9 were over, I think, [REDACTED] of their past so many</p> <p>10 weeks prescribing, and then the highest prescribers</p> <p>11 of controlled substances, I know they received those</p> <p>12 reports.</p> <p>13 But I'm not sure of what the complete</p> <p>14 package was that Albertsons received.</p> <p>15 Q. Okay. You've never looked at that data</p> <p>16 from IQVIA yourself, have you?</p> <p>17 A. No, I have not.</p> <p>18 Q. When you reference that Albertsons</p> <p>19 received data regarding the highest prescribers in a</p> <p>20 particular area in that IQVIA data, that's based on</p> <p>21 your understanding from a deposition, correct?</p> <p>22 A. Correct.</p> <p>23 MR. ELSNER: Have you produced the IQVIA</p> <p>24 data?</p> <p>25 MS. MILLER: Have I produced IQVIA data?</p>

<p style="text-align: right;">Page 190</p> <p>1 MR. ELSNER: Yeah. You've asked him if he</p> <p>2 looked at it. Has Albertsons produced the --</p> <p>3 MS. MILLER: I don't believe there's a</p> <p>4 pending request for IQVIA data. It's not our</p> <p>5 product either. We don't own it.</p> <p>6 MR. ELSNER: Okay.</p> <p>7 MS. MILLER: That would be something to</p> <p>8 ask IQVIA for.</p> <p>9 BY MS. MILLER:</p> <p>10 Q. When you say this data was never shared</p> <p>11 with pharmacists, that's based on your understanding</p> <p>12 from reviewing a deposition?</p> <p>13 A. Yes.</p> <p>14 Q. With respect to pharmacy -- the pharmacy</p> <p>15 information system that contains the dispensing</p> <p>16 data, do you know what system Albertsons uses?</p> <p>17 A. I do not.</p> <p>18 Q. Do you -- are you familiar with different</p> <p>19 pharmacy information systems?</p> <p>20 A. Only in a very general sense.</p> <p>21 Q. Okay. Are you -- do you have an</p> <p>22 understanding that while there may be some large</p> <p>23 pharmacies that may develop their own pharmacy</p> <p>24 information systems, that other pharmacies need to</p> <p>25 buy those systems off the shelf, as off-the-shelf</p>	<p style="text-align: right;">Page 192</p> <p>1 No, I have no idea what they did with it.</p> <p>2 Q. On Page 66, you offered an opinion in the</p> <p>3 first full paragraph, halfway down.</p> <p>4 You stated, "There's no single specific</p> <p>5 place for pharmacists to document measures taken to</p> <p>6 determine the legitimacy of a prescription."</p> <p>7 The next paragraph, you note, "This</p> <p>8 creates a system in which critical information</p> <p>9 regarding how and why red flags may have been</p> <p>10 identified and resolved is elusive and difficult for</p> <p>11 a pharmacist to find."</p> <p>12 Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. You've testified you don't know</p> <p>15 what a pharmacist sees on their information system</p> <p>16 when they are dispensing a prescription, correct?</p> <p>17 MR. ELSNER: Objection.</p> <p>18 THE WITNESS: I don't see this. I don't</p> <p>19 know the screen, no.</p> <p>20 BY MS. MILLER:</p> <p>21 Q. Okay. You referenced testimony in which</p> <p>22 there are different places for a pharmacist to</p> <p>23 document their resolution of red flag information,</p> <p>24 correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 191</p> <p>1 products?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any understanding as to</p> <p>4 whether Albertsons used an off-the-shelf product</p> <p>5 versus developing its own?</p> <p>6 A. No.</p> <p>7 Q. Do you have any information regarding what</p> <p>8 a pharmacist sees at Albertsons when -- on its</p> <p>9 information system when it is dispensing a</p> <p>10 prescription?</p> <p>11 A. No.</p> <p>12 Q. Do you have any knowledge as to what</p> <p>13 add-ons Albertsons uses with its pharmacy software</p> <p>14 to assist with controlled substance dispensing?</p> <p>15 A. No.</p> <p>16 Q. Do you know what information Albertsons'</p> <p>17 compliance team utilizes with respect to controlled</p> <p>18 substance dispensing analytics?</p> <p>19 A. There was some information in the</p> <p>20 depositions and reference to the PCAT team, but I</p> <p>21 can't recall the specifics of those documents.</p> <p>22 Q. Do you have an understanding as to what</p> <p>23 Albertsons did with the external data that it</p> <p>24 received with respect to controlled substances?</p> <p>25 A. That was one of the questions that I had.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Okay. And that included the handwritten</p> <p>2 or the hard-copy prescription, correct?</p> <p>3 A. Yes.</p> <p>4 Q. That included the patient profile notes,</p> <p>5 correct?</p> <p>6 A. The column was Albertsons notes, yes.</p> <p>7 Q. And in those different places to document,</p> <p>8 do you have any understanding as to whether that</p> <p>9 information is available to the pharmacist within</p> <p>10 the patient profile when they pull it up to dispense</p> <p>11 a prescription?</p> <p>12 A. When I looked at the Notes information</p> <p>13 that supposedly was available to the pharmacist, but</p> <p>14 I did not see firsthand, there was no way to</p> <p>15 understand what was the relevant note, because there</p> <p>16 was just a compilation of notes with no dates within</p> <p>17 that field.</p> <p>18 And then there was a separate NOTE field,</p> <p>19 capital N-O, capital T-E, that also had notes, but</p> <p>20 most of those notes weren't relevant to the patient</p> <p>21 profile or the prescription.</p> <p>22 So if the pharmacist saw those as patient</p> <p>23 profiles, I have no idea what that information meant</p> <p>24 or what the pharmacist was documenting.</p> <p>25 Q. Okay. And do you have any understanding</p>

<p style="text-align: right;">Page 194</p> <p>1 as to whether the pharmacists who are reviewing that</p> <p>2 on their own system did or did not have an</p> <p>3 understanding as to what the notes reflected?</p> <p>4 A. I have no way to comment on that.</p> <p>5 Q. Okay. Do you know what steps a pharmacist</p> <p>6 would need to take to view all the notes, and when</p> <p>7 those notes were entered for -- on a particular</p> <p>8 patient?</p> <p>9 MR. ELSNER: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MS. MILLER:</p> <p>12 Q. On Page 65, it might be elsewhere in your</p> <p>13 report, you expressed criticism of Albertsons'</p> <p>14 policies stating that pharmacists should register</p> <p>15 for access to the state PMP, rather than require it,</p> <p>16 and require regular use, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And the document you're referring</p> <p>19 to is a 2013 document, correct, on Page 65?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Would you agree that not all states</p> <p>22 had a PMP in 2013?</p> <p>23 A. I would have to check the facts, but I</p> <p>24 can't recall how many states did, nor how many</p> <p>25 states didn't.</p>	<p style="text-align: right;">Page 196</p> <p>1 done by the pharmacists.</p> <p>2 Q. So are you stating that if there's not a</p> <p>3 note that the pharmacist checked the PMP, that it's</p> <p>4 your conclusion that the pharmacist did not, in</p> <p>5 fact, check the PMP?</p> <p>6 A. It's my assertion that if it's not</p> <p>7 documented, then there's no way to know that it</p> <p>8 actually happened or exists.</p> <p>9 Q. Okay. So there's no way to know that it</p> <p>10 happened, but there's also no way to know that it</p> <p>11 didn't happen, correct?</p> <p>12 MR. ELSNER: Objection.</p> <p>13 THE WITNESS: I would say there's no way</p> <p>14 to know it happened.</p> <p>15 BY MS. MILLER:</p> <p>16 Q. Do you have any knowledge or understanding</p> <p>17 as to whether Albertsons' pharmacists in the State</p> <p>18 of Texas, if there were pharmacists who did not</p> <p>19 register for the PMP?</p> <p>20 A. I have no knowledge to know whether they</p> <p>21 registered or not.</p> <p>22 Q. Prior to March 2020, you agree that, in</p> <p>23 Texas, it was not mandatory for pharmacists to check</p> <p>24 the PMP prior to dispensing any opioid -- checking</p> <p>25 opioid scripts, correct?</p>
<p style="text-align: right;">Page 195</p> <p>1 I think Texas' program was available.</p> <p>2 Legislation was passed in 2008, and then the program</p> <p>3 was made operational. So I'm not sure if it was</p> <p>4 available in how many states or not. I don't know.</p> <p>5 Q. Okay. Your conclusion that Albertsons'</p> <p>6 pharmacists were not required to register with the</p> <p>7 PMP is based on the statement in this document,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Are you aware of any other</p> <p>11 documents or any other practices or procedures that</p> <p>12 Albertsons implemented to ensure that its</p> <p>13 pharmacists registered with the PMP?</p> <p>14 A. Not that I saw.</p> <p>15 Q. Okay. Do you have any knowledge regarding</p> <p>16 Albertsons pharmacists' use of the PMP, the actual</p> <p>17 pharmacists' use of the PMP, outside of this</p> <p>18 document?</p> <p>19 A. Yes.</p> <p>20 MR. ELSNER: Objection.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. And what's that knowledge?</p> <p>23 A. Again, in the sample data provided by</p> <p>24 Albertsons, when I looked at pharmacists' notes on</p> <p>25 checking the PMP, there was very little PMP checking</p>	<p style="text-align: right;">Page 197</p> <p>1 MR. ELSNER: Object to the time frame.</p> <p>2 MS. MILLER: 2020, March 2020.</p> <p>3 THE WITNESS: I don't think so. I think</p> <p>4 it's covered in my report when Texas mandated,</p> <p>5 if I can find it.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. I didn't write the page down either.</p> <p>8 A. It was in here this morning.</p> <p>9 Q. Yeah, I know. I'm usually pretty good</p> <p>10 about writing the page numbers down, and I didn't.</p> <p>11 It's frustrating.</p> <p>12 MS. MILLER: Note to you for next week,</p> <p>13 write down all the page numbers in your</p> <p>14 outline.</p> <p>15 MS. WHITE: That's Missy's job.</p> <p>16 MS. MILLER: Yeah.</p> <p>17 THE WITNESS: It's on Page 18.</p> <p>18 BY MS. MILLER:</p> <p>19 Q. 18. I was looking too far deep.</p> <p>20 A. This will give you exact dates. Texas</p> <p>21 implemented a Prescription Drug Monitoring Program</p> <p>22 known as the Texas PMP. The law was signed in 1981.</p> <p>23 2008, the PMP monitor scheduled three,</p> <p>24 blah, blah, blah. All pharmacies were required to</p> <p>25 report controlled substances records beginning in</p>



<p style="text-align: right;">Page 198</p> <p>1 2017, and required to check the PMP beginning on 2 2020. 3 Q. Okay, right. So in September 2017, 4 pharmacies were required to report controlled 5 substance dispensing into the PMP. 6 And then March 1, 2020, is when they were 7 required to check the PMP prior to dispensing 8 opioids, correct? 9 A. Correct. 10 Q. Okay. Is it your opinion that Albertsons 11 should have required its pharmacists to check the 12 PMP for every opioid script, regardless of whether 13 there was a red flag, prior to March 1, 2020? 14 A. Yes. 15 Q. All right. So in checking the PMP, is it 16 your opinion that pharmacists should check the PMP 17 for every opioid prescription, whether there's a red 18 flag or not? 19 A. Yes. 20 Q. And when did you form the opinion that the 21 PMP check should be mandatory for every opioid 22 script? 23 MR. ELSNER: Objection. 24 THE WITNESS: It's been my -- part of my 25 process, part of my reasoning since PMPs were</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yes. 2 Q. Okay. And what -- do you know what the 3 basis for that position was? 4 A. Yes. 5 Q. What was the basis for that position? 6 A. The Executive Committee, as the oversight 7 body, disagreed with mine and staff recommendation 8 that it should be mandated because they were seeking 9 to get the PMPs adopted in all of the states. 10 And the concern there was, if NABP came 11 out and said that the PMP should be mandated, then 12 those people in the states, particularly attorneys 13 who opposed access to this information based upon 14 privacy restrictions, would kill any effort to 15 implement a PMP. 16 So it was a compromise by the Executive 17 Committee to try and get the PMPs implemented at 18 first, rather than to try and get everything at once 19 and not have the implementation that was needed. 20 Q. Okay. So it's your opinion that 21 Albertsons should have adhered to a standard of care 22 of requiring a check of the PMP prior to dispensing 23 every opioid prescription, despite the fact that 24 Texas did not require that of its pharmacists, nor 25 did the NABP recommend requiring that of its</p>
<p style="text-align: right;">Page 199</p> <p>1 developed. 2 MS. MILLER: Okay. 3 (Exhibit 21 was marked for 4 identification.) 5 MS. MILLER: I hand you what I've marked 6 as Exhibit Number 21. This is a document from 7 the NABP. It's a report of a task force on 8 prescription drug abuse. 9 BY MS. MILLER: 10 Q. Do you recall this task force? 11 A. Yes. 12 Q. Did you participate in this task force? 13 A. No, I did not. 14 Q. Okay. At the top, it notes that "The NABP 15 Executive Committee accepted all recommendations of 16 this task force with the following exception." 17 Under Recommendation 4, if you go a couple 18 lines down, it says, "The Executive Committee does 19 not support a mandate of the review of PMP data for 20 dispensing controlled substances at this time." 21 Do you see that? 22 A. Yes. 23 Q. Do you recall that this was NABP's 24 position, that they did not support a mandate of 25 review of PMP data?</p>	<p style="text-align: right;">Page 201</p> <p>1 pharmacists, correct? 2 A. Correct. 3 Q. Do you -- are you aware of whether the 4 NABP, during the time you were executive director, 5 ever published any statement or guidance to 6 pharmacies that the PMP check should be mandatory 7 for every opioid prescription prior to dispensing? 8 A. I believe at the end of my tenure at NABP, 9 those statements were made. 10 Q. Okay. And that would have been in 2020? 11 A. Probably around 20 -- beginning in 2016 to 12 2020, somewhere in that time. 13 Q. And in what form of document would that 14 statement have been made? 15 A. It may have been in an interview with me. 16 It may have been through the PMP committees. 17 What happened is NABP organized all of the 18 PMP directors into an advisory committee, and I know 19 at those meetings -- I'm not sure if they still 20 retained the minutes -- but at those meetings, NABP 21 would make the recommendation that it should be 22 mandated. 23 Q. Are you aware of any document, industry 24 guidance, source, in 2013 or before then, that would 25 have advised pharmacies that standard of care</p>

<p style="text-align: right;">Page 202</p> <p>1 required them to mandate checking the PMP prior to  2 dispensing every opioid prescription, regardless of  3 whether there's a red flag?  4 A. Not as a mandate.  5 Q. You referenced -- on Page 70, you  6 reference pharmacy workload studies and metrics,  7 correct?  8 A. Yes.  9 Q. And the number of -- you reference a  10 number of studies that were done.  11 Are you aware of whether any Albertsons  12 pharmacist participated in any of these studies that  13 you've referenced?  14 A. Specifically, no. But conceptually, yes.  15 Q. Okay. When you say "conceptually, yes,"  16 what do you mean by that?  17 A. When you would ask me questions prior,  18 where you say, if the data were different, would you  19 get a different answer, and I would say  20 "conceptually, yes," I would say it's highly likely  21 that Albertsons pharmacies that were registered in  22 the states would have received a survey and would  23 have responded to that, but I have no information to  24 say that they did or did not.  25 Q. Okay. Do you have an opinion as to how</p>	<p style="text-align: right;">Page 204</p> <p>1 would be.  2 BY MS. MILLER:  3 Q. Okay. And if we break it down by hour,  4 somewhere between three per hour and --  5 A. 60.  6 Q. -- 60 per hour, okay.  7 Would you agree that opioid prescriptions  8 take a longer time to complete the process for  9 dispensing than noncontrolled substances?  10 A. Opiates and any controlled substance, yes.  11 Q. Do you know what the average percentage of  12 opioid prescriptions to noncontrolled substance  13 prescriptions are for a chain pharmacy?  14 A. I know that the percentage is somewhere  15 between 15 and 20, and there was a number in  16 documents that Albertsons produced that said  17 percentages over 13 percent or around 13 percent is  18 something that would need to be looked at.  19 Q. So, generally, Albertsons expected that  20 there would be less than 13 percent, correct?  21 A. That's what the documents seem to say,  22 yes.  23 Q. Would you agree it's important to  24 understand how many scripts a particular pharmacy  25 fills on average so that the pharmacy can make</p>
<p style="text-align: right;">Page 203</p> <p>1 many scripts, on average, it's reasonable for a  2 pharmacist to fill per hour or per day?  3 MR. ELSNER: Objection.  4 THE WITNESS: I would say depending upon  5 how much technician help a pharmacist has, that  6 would be a factor to consider, as well as the  7 volume of that pharmacy.  8 I think if I had an opinion, requiring a  9 pharmacist or asking a pharmacist to fill 60  10 prescriptions an hour, which is one  11 prescription every minute, is not a reasonable  12 total.  13 And so if a pharmacist worked an  14 eight-hour shift, 8 times 60 is 480  15 prescriptions. 500 prescriptions a day would  16 not be reasonable.  17 If you give each prescription 20 minutes,  18 and that's on average, not including  19 significantly bad prescriptions, then you're  20 talking about three prescriptions per hour  21 times eight hours. You're talking 24  22 prescriptions a day. That's probably not the  23 lower limit of that.  24 So it's probably somewhere between 24 and  25 500, but I don't know what that exact number</p>	<p style="text-align: right;">Page 205</p> <p>1 appropriate staffing decisions?  2 A. Yes.  3 Q. Have you ever been involved in determining  4 what appropriate staffing is based on a volume at a  5 pharmacy?  6 A. As a pharmacist, yes.  7 Q. And that was at the time you were at Osco?  8 A. Correct.  9 Q. Do you recall what those parameters were  10 that you used?  11 A. Yes. At Osco, we were filling between 3  12 and 500 prescriptions per day, and that was two  13 pharmacists with limited technician help.  14 So what was unreasonable in terms of  15 staffing is, as a pharmacist, you'd fill 100  16 prescriptions from 9:00 in the morning until 12:00,  17 which is about 30 or 40 per hour, and the request  18 was that we needed a technician on duty just about  19 every hour except during the slow periods when the  20 pharmacist was filling maybe 5 or 10 prescriptions  21 per hour.  22 Q. You made reference to deposition  23 testimony, and I'm on Page 68, where you talked  24 about Albertsons looking to increase prescription  25 volume as a goal for its pharmacists.</p>

<p style="text-align: right;">Page 206</p> <p>1 Do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. Did you see any documents that you</p> <p>4 reviewed that provided what the average script time</p> <p>5 was for pharmacists at Albertsons?</p> <p>6 A. Yes.</p> <p>7 Q. And what -- do you recall what that was?</p> <p>8 A. Two different documents. There was a</p> <p>9 deposition for one of the pharmacy managers where</p> <p>10 they were taking disciplinary action or writing up</p> <p>11 an action plan for a pharmacist and a technician,</p> <p>12 who they claimed talked too much, and that it was</p> <p>13 taking longer than 20 minutes for patients to get</p> <p>14 their prescriptions.</p> <p>15 And then there was times in the Albertsons</p> <p>16 policy that said all prescriptions for patients</p> <p>17 waiting should be between 15 and 20 minutes. And if</p> <p>18 it was called in, I think it was an hour or two.</p> <p>19 And if it was to be picked up later, it would be</p> <p>20 four hours.</p> <p>21 So I saw that was in the policy documents.</p> <p>22 Q. And in the policy references, were those</p> <p>23 references mandates or targets?</p> <p>24 A. I guess that depends on Albertsons,</p> <p>25 whether people are supposed to follow the policies</p>	<p style="text-align: right;">Page 208</p> <p>1 pharmacy manager was saying that Albertsons expects</p> <p>2 a 20-minute turnaround time on prescriptions.</p> <p>3 Q. Okay. Did you see any data in the</p> <p>4 documents that you reviewed that actually give the</p> <p>5 actual script, average script time?</p> <p>6 A. No.</p> <p>7 Q. If Albertsons' actual script time average</p> <p>8 per pharmacist was less than five scripts per hour,</p> <p>9 would you consider that to be a reasonable number?</p> <p>10 A. Without seeing the prescriptions, I can't</p> <p>11 comment if it's reasonable or not, because some</p> <p>12 prescriptions could take less than 20 and some could</p> <p>13 take more than 20.</p> <p>14 Q. Okay. But as a general rule, you agree</p> <p>15 that it's important to look at these numbers to</p> <p>16 understand appropriate staffing, and that's</p> <p>17 numbers-based, not looking at specific</p> <p>18 prescriptions, correct?</p> <p>19 A. No.</p> <p>20 MR. ELSNER: Objection.</p> <p>21 THE WITNESS: But the rule, the general</p> <p>22 rule that I follow is that every pharmacist</p> <p>23 should be afforded the time needed to perform</p> <p>24 the due diligence for each prescription.</p> <p>25 And that metric, I don't know how you set</p>
<p style="text-align: right;">Page 207</p> <p>1 or not.</p> <p>2 I would think if it's a policy, it was</p> <p>3 mandated.</p> <p>4 Q. Okay. But that's an assumption on your</p> <p>5 part, correct?</p> <p>6 MR. ELSNER: Objection.</p> <p>7 THE WITNESS: I think policies generally</p> <p>8 mean that, that that's what you follow.</p> <p>9 BY MS. MILLER:</p> <p>10 Q. Okay. That reference that you mentioned</p> <p>11 to the 15 to 20 minutes per waiting, you didn't find</p> <p>12 that in Albertsons' -- what you referred to as their</p> <p>13 formal pharmacy practice policy, did you?</p> <p>14 MR. ELSNER: Objection.</p> <p>15 THE WITNESS: I believe that was in the</p> <p>16 policy guidelines, policy, one of those</p> <p>17 documents.</p> <p>18 BY MS. MILLER:</p> <p>19 Q. Okay. And the document you're referring</p> <p>20 to, you would have cited in your report, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You mentioned another document that</p> <p>23 you saw that referenced what Albertsons' average</p> <p>24 rate was of scripts per hour; is that correct?</p> <p>25 A. It was that -- the deposition where the</p>	<p style="text-align: right;">Page 209</p> <p>1 that. The pharmacist has to do their due</p> <p>2 diligence and make sure the patient is served.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. You agree if a pharmacy makes a</p> <p>5 determination that its script counts are high, it's</p> <p>6 appropriate for the pharmacy to add more staff,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Wouldn't you have to evaluate the</p> <p>10 script count numbers as part of that evaluation?</p> <p>11 MR. ELSNER: Objection.</p> <p>12 THE WITNESS: As one part, yes.</p> <p>13 BY MS. MILLER:</p> <p>14 Q. Are you aware of any evidence that</p> <p>15 Albertsons penalized any pharmacists for refusals to</p> <p>16 fill opioid prescriptions?</p> <p>17 A. I could not find any data that Albertsons</p> <p>18 maintained of pharmacists refusing to fill, and so I</p> <p>19 don't know if they ever disciplined either -- oh,</p> <p>20 I'm sorry.</p> <p>21 Yes, in one of the depositions, there was</p> <p>22 a pharmacist who was disciplined because they</p> <p>23 refused to fill a prescription. But the action,</p> <p>24 they said, was because of how the pharmacist</p> <p>25 communicated with the patient, not the actual act of</p>

Page 210

1 refusing to fill.  
2 So that was the only thing I saw mentioned  
3 in any of the data.  
4 Q. Okay. Would you agree that standard of  
5 care for pharmacists includes treating customers  
6 appropriately with respect to opioid prescriptions?  
7 MR. ELSNER: Objection.  
8 THE WITNESS: Yes.  
9 BY MS. MILLER:  
10 Q. You've offered opinions regarding an  
11 Albertsons store bonus plan on Page 69. And in your  
12 opinion, you have concluded that this store bonus  
13 plan applies to pharmacists, correct?  
14 A. That was my understanding, yes.  
15 Q. Okay. What's that understanding based on?  
16 A. As noted there in the report, the bonus  
17 plan that I reviewed, and then that paragraph under  
18 the [REDACTED]  
19 If the prescription volume of pharmacy  
20 fills increases, pharmacists are eligible to receive  
21 increasing bonus payments in the [REDACTED].  
22 It was based upon that store bonus plan  
23 that I reviewed.  
24 Q. Okay. If you were to learn that  
25 pharmacists were not eligible for this bonus, would

Page 211

1 that impact your opinions regarding Albertsons  
2 incentivizing pharmacists with this bonus plan?  
3 A. If the pharmacists weren't pressured or  
4 incentivized on script volume, then I might look at  
5 that number again, but I'm not sure it would change  
6 my opinion.  
7 Q. Okay. And when you say "pharmacists  
8 weren't pressured or incentivized on script volume,"  
9 have we already -- outside of this bonus plan, have  
10 we already covered the evidence that you were  
11 relying on to suggest that pharmacists were  
12 pressured or incentivized on script volume?  
13 MR. ELSNER: Objection.  
14 THE WITNESS: I didn't understand that,  
15 I'm sorry.  
16 BY MS. MILLER:  
17 Q. So I'm trying to understand your  
18 qualification, okay.  
19 We've gone through -- you've referenced a  
20 deposition which discussed a policy seeking  
21 pharmacists to have a certain level of script  
22 volume, correct?  
23 A. No. That was filling prescriptions in a  
24 certain number of minutes, is what we discussed.  
25 Q. Within a certain number of minutes, okay.

Page 212

1 Other than that document or that  
2 deposition testimony document, is there any other  
3 evidence that you're pointing to outside of the  
4 bonus plan for your opinion that Albertsons  
5 incentivized or pressured pharmacists on script  
6 volume?  
7 MR. ELSNER: Objection.  
8 THE WITNESS: Whatever is in the report,  
9 those documents are what I based it on.  
10 BY MS. MILLER:  
11 Q. Okay. So to the extent that -- well,  
12 scratch that.  
13 Would you agree with me that a store bonus  
14 plan that is not applicable to pharmacists is not an  
15 incentive for pharmacists to fill prescriptions?  
16 MR. ELSNER: Objection.  
17 THE WITNESS: I'll try to answer.  
18 I think anything that pressures the  
19 pharmacist in terms of script volume, whether  
20 there is an incentive there, compromises the  
21 pharmacist's ability to due diligence.  
22 And I guess the other document I would  
23 reference is when pharmacists contacted  
24 corporate to complain that their technician  
25 hours had been cut, even though their

Page 213

1 prescription volume was raised.  
2 And the response back from the pharmacy  
3 manager at corporate was, "We've been asked to  
4 cut costs by 10 percent."  
5 And the pharmacy was saying back to them,  
6 "I can't do that without adequate help."  
7 So there's some pressure there in terms of  
8 budget and staffing that was exerted on the  
9 pharmacy that was impacting the pharmacists'  
10 ability to perform their duties as necessary.  
11 BY MS. MILLER:  
12 Q. Okay. And that's in one circumstance.  
13 Do you know whether that pharmacy was  
14 located in Tarrant County, Texas?  
15 A. I can't recall. I'd have to review the  
16 deposition. But I thought it might be.  
17 Q. You have expressed opinions regarding  
18 individual doctors starting on Page 77.  
19 In this section of the report, you've  
20 identified four doctors, Lloyd Weldon, Gregory Skie,  
21 Arnold Morris, and Christopher Ince, I don't know if  
22 I'm pronouncing that correctly, I-n-c-e.  
23 A. Yes.  
24 Q. Correct? How did you identify these  
25 doctors as a focus of your report?

<p style="text-align: right;">Page 214</p> <p>1 A. I began with a broad general search, in 2 which I use standard search engines to look for 3 "Texas doctors disciplined Texas opioids." 4 From that, I garnered a list of 5 physicians. I then went to the Texas Medical Board 6 site and did the same type of general search. 7 And then I looked at doctors in the 8 prescribing data and gave the names of these 9 doctors, then, over to Dr. McCann, to run data on 10 how many of those doctors flagged. 11 And that's the chart on Page 79. 12 Q. Okay. 13 A. And then subsequent to each of those 14 doctors. 15 Q. Do you have any documents or notes 16 regarding how many -- how many doctors came up in 17 your search under the "Texas doctors disciplined for 18 opioid" search? 19 A. I do not. 20 Q. Would it be fair to assume that it was 21 more than four? 22 A. Yes. 23 Q. Do you have any idea how many more than 24 four? 25 A. I really don't.</p>	<p style="text-align: right;">Page 216</p> <p>1 were opioid prescriptions. 2 But did you do an evaluation as to the 3 percentage those 1200 scripts, what percentage of 4 prescriptions Albertsons dispensed in Albertsons -- 5 in Tarrant County? 6 Sorry. I'm getting tired. 7 MR. ELSNER: Objection. 8 THE WITNESS: For that individual doctor 9 or total? 10 BY MS. MILLER: 11 Q. Correct, yeah. 12 A. No. 13 Q. What's the percentage that Albertsons 14 dispensed to this doctor, in comparison to its 15 dispensing in Tarrant County? 16 A. I didn't do that one. 17 Q. Okay. 18 A. Or Dr. McCann wasn't asked to do that for 19 me. 20 Q. So did you employ any type of methodology, 21 statistical analysis, to determine if this was a 22 representative sample of Albertsons' dispensing in 23 Tarrant County? 24 MR. ELSNER: Objection. 25 THE WITNESS: I'm sorry. I don't</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Okay. And so then you identified these 2 doctors by looking at Albertsons' dispensing data; 3 is that correct? You narrowed the list to these 4 doctors? 5 A. Correct. 6 Q. Do you -- is it your opinion that these 7 four prescribers represent -- or present a 8 representative sample of Albertsons' dispensing in 9 Tarrant County? 10 A. I'm representing it presented a sample of 11 the type of activities that Albertsons engaged and 12 didn't engage in that helped me form my opinion. 13 Q. Okay. Did you do an assessment as to what 14 percentage of Albertsons' dispensing in 15 Tarrant County were to these doctors? 16 A. I believe that there's information in the 17 report that talks about that. 18 For example, Page 78, Albertsons filled 19 over 2300 prescriptions at their Tarrant County 20 pharmacies that were written by Weldon from 2006 to 21 '15. Within each of those, I believe I mentioned 22 specifically how many of those prescriptions were 23 filled in Tarrant County. 24 Q. Well, you mentioned how many were filled 25 in Tarrant County, and you mentioned 1200 of them</p>	<p style="text-align: right;">Page 217</p> <p>1 understand the question. 2 BY MS. MILLER: 3 Q. Did you employ any methodology to suggest 4 that this Dr. Lloyd Weldon is representative of 5 Albertsons' dispensing in Tarrant County? 6 A. The answer is yes. 7 Q. Okay. And what methodology did you use? 8 A. The methodology I described where I 9 identified those doctors, and I looked at how 10 prevalent those doctors' prescribing were, and the 11 sample prescriptions that Albertsons provided. 12 Q. Okay. And so in terms of how prevalent 13 those prescriptions were, are you saying that you 14 did an evaluation and concluded that it was a 15 significant number of prescriptions that Albertsons 16 was dispensing to this doctor as compared to other 17 doctors? 18 A. I'm testifying that it was a significant 19 number. 20 If you'd turn to Page 79, it says, "For 21 instance, in 2009, Albertsons Store 41 filled an 22 oxycodone," and then it says that there were 23 23 pills per day. And it also gives totals later of 24 how many prescriptions were dispensed or dosage 25 units in Tarrant County per population.</p>



<p style="text-align: right;">Page 218</p> <p>1        So I did do that analysis for these</p> <p>2        prescribers.</p> <p>3        Q.    Okay. So you compared -- okay. I think I</p> <p>4        understand your answer.</p> <p>5        Did you do any evaluation as to whether</p> <p>6        there were any prescriptions that were dispensed by</p> <p>7        Albertsons after Mr. Weldon was disciplined?</p> <p>8        A.    I think that's mentioned in the report as</p> <p>9        well, that some prescriptions were.</p> <p>10       Q.    Okay. And can you refer to me?</p> <p>11       So he was disciplined in 2013, correct?</p> <p>12       A.    Well, it started before that.</p> <p>13       Albertsons, on Page 78, Albertsons filled</p> <p>14       over 2300 written by Weldon from 2006 to '15. I</p> <p>15       think he was beginning to be disciplined, on the</p> <p>16       prior page, on 2002, 2006, 2007, and 2010.</p> <p>17       So those disciplinary actions were all</p> <p>18       pending. And in the time period, Albertsons</p> <p>19       dispensed, as I mentioned in the report, 2300</p> <p>20       prescriptions.</p> <p>21       Q.    Okay. But it was the 2013 order which</p> <p>22       modified his DEA license, correct?</p> <p>23       A.    He was -- to eliminate his ability to</p> <p>24       prescribe Schedule II.</p> <p>25       But prior to that, in 2012, filed against</p>	<p style="text-align: right;">Page 220</p> <p>1       then you say separately that there were 1200 opioid</p> <p>2       prescriptions.</p> <p>3       Did you do any analysis to see whether</p> <p>4       opioid prescriptions were filled after 2013?</p> <p>5       A.    I can't recall that data.</p> <p>6       Q.    Okay. Okay. The next prescriber is</p> <p>7       Gregory Skie. And in 2020, he was disciplined and</p> <p>8       required to surrender his DEA license, correct?</p> <p>9       A.    Correct.</p> <p>10       Q.    Okay. Prior to 2020, the Texas Medical</p> <p>11       Board allowed him to keep his DEA license, correct?</p> <p>12       A.    He was -- they allowed him to keep it, but</p> <p>13       he was disciplined multiple times.</p> <p>14       Q.    Okay. And same answer [sic].</p> <p>15       Do you have any information or evidence</p> <p>16       that Albertsons received information from the Texas</p> <p>17       Medical Board regarding these disciplinary actions</p> <p>18       prior to 2020?</p> <p>19       A.    No.</p> <p>20       Q.    Do you know what the process is at</p> <p>21       Albertsons for pharmacists to look at a prescriber's</p> <p>22       DEA license before dispensing?</p> <p>23       A.    The only information I have were two bits</p> <p>24       of information that I gleaned from the data and from</p> <p>25       the information.</p>
<p style="text-align: right;">Page 219</p> <p>1       Weldon for prescribing opioids or benzodiazepines,</p> <p>2       excessively prescribed controlled substances,</p> <p>3       including quantities in improper combinations.</p> <p>4       So there were disciplinary actions taken</p> <p>5       against this prescriber since 2002 that spoke to</p> <p>6       every one -- spoke to some of the red flags, and</p> <p>7       information should have been known to Albertsons.</p> <p>8       Q.    Okay. Whether you say this information</p> <p>9       should have been known to Albertsons, how should</p> <p>10       Albertsons have received that information?</p> <p>11       A.    The information is sent out to the</p> <p>12       pharmacies and to corporate by the medical board and</p> <p>13       sometimes in the pharmacy board newsletters.</p> <p>14       Q.    Do you have any knowledge that these</p> <p>15       actions prior to 2013 were, in fact, sent from the</p> <p>16       Texas Medical Board to Albertsons?</p> <p>17       A.    I don't have that information. I just</p> <p>18       comment on what the process usually is for the</p> <p>19       medical and pharmacy boards to get the information</p> <p>20       out.</p> <p>21       Q.    Do you know whether or not that is the</p> <p>22       process for the Texas Medical Board?</p> <p>23       A.    Yes.</p> <p>24       Q.    Okay. Do you -- you mentioned that</p> <p>25       prescriptions were filled from 2006 to 2015, but</p>	<p style="text-align: right;">Page 221</p> <p>1       I know a pharmacist reported problems with</p> <p>2       a physician and possible fraudulent prescribing to</p> <p>3       corporate. And there was no action for three to</p> <p>4       four months.</p> <p>5       It was an electronic prescription. And</p> <p>6       the pharmacist was concerned that the electronic</p> <p>7       prescribing information or validation of the</p> <p>8       physician had been compromised.</p> <p>9       So I don't know how that was reported or</p> <p>10       what happened.</p> <p>11       The other information was the significant</p> <p>12       number of wrong DEA numbers that existed in the</p> <p>13       Albertsons data, which indicated that either those</p> <p>14       numbers were being entered incorrectly or they</p> <p>15       weren't being checked before the pharmacists were</p> <p>16       actually dispensing the prescriptions.</p> <p>17       Q.    Okay. I saw reference that the DEA</p> <p>18       numbers were missing --</p> <p>19       A.    Missing.</p> <p>20       Q.    -- from the data.</p> <p>21       But do you have an opinion that they were</p> <p>22       entered incorrectly?</p> <p>23       A.    I think within that data, they mention</p> <p>24       that some of the DEA numbers, there wasn't the</p> <p>25       proper identification of the physician.</p>

<p style="text-align: right;">Page 222</p> <p>1 And, for example, I think it was Lloyd 2 Weldon, where they had different names and 3 different -- just different names for the same DEA 4 number. 5 Q. Okay. The dispensing data, so just so I'm 6 understanding your opinion, you're referencing that 7 the dispensing data that Dr. McCann reviewed, in 8 that dispensing data category, it was missing the 9 DEA number for a number of physicians, correct? 10 A. And also then for doctors, if they could 11 not identify because there were multiple names for 12 the same DEA number, which I would consider an 13 incorrect DEA number. 14 Q. Did you do any evaluation as to whether 15 there was any patterns in the data that was missing 16 the DEA numbers by year? 17 A. No, and there was a whole year of data 18 that Albertsons lost for some reason, so I wasn't 19 able to look at that data year. 20 Q. Okay. Do you have any understanding as to 21 how Albertsons' historical dispensing data has been 22 stored and collected? 23 MR. ELSNER: Objection. 24 THE WITNESS: I know -- all I know is two 25 facts; that it was stored in some sort of</p>	<p style="text-align: right;">Page 224</p> <p>1 do I know how Albertsons stores its data. So I 2 thought that would refer to the historical data, 3 but ... 4 Q. Okay, yes. Are you -- are you familiar 5 with Albertsons' requirements for recording DEA 6 license numbers into its pharmacy systems? 7 A. The actual process, no. But I know the 8 requirement is that for all controlled substances, a 9 DEA number must be present, and it must be correct. 10 Q. Okay. What I'm getting at is you haven't 11 evaluated the dispensing data for that section of -- 12 where the DEA number is missing, you haven't 13 evaluated whether that data came from historical 14 data storage or from Albertsons' current pharmacy 15 information system, correct? 16 A. I haven't done that, but it's still a 17 violation of the Controlled Substance Act not to 18 have a DEA number for that prescription. 19 Q. That violation of the Controlled Substance 20 Act to not have that information -- 21 A. Readily retrievable. 22 Q. And for how far back? 23 A. It's up to the DEA. 24 Q. Okay. So you don't have an opinion as to 25 how far back Albertsons needs to store the DEA</p>
<p style="text-align: right;">Page 223</p> <p>1 central warehouse, and then Albertsons lost a 2 whole year's worth of dispensing data. 3 But I'm not sure why they lost that 4 dispensing data. 5 BY MS. MILLER: 6 Q. Okay. Are you familiar with Albertsons' 7 history in that there has been many changes to the 8 company over time, including mergers with Safeway, 9 divestitures of pharmacy divisions? 10 Are you familiar with that history? 11 A. Yes. I mean, from an outside observer's 12 perspective. 13 Q. Okay. One of my questions is, with 14 respect to the dispensing data that is missing, the 15 dispensing data that was missing was from around 16 2010-2011, somewhere in that time period. 17 So I would refer to that as historical 18 data. It's not the active data that Albertsons was 19 using on its current pharmacy system. 20 I'm not asking you to comment on that. 21 Just that's what I'm referring to. 22 And, again, you've testified you're not 23 familiar with what Albertsons' pharmacy systems 24 consist of, correct? 25 A. Correct. But the question you asked me is</p>	<p style="text-align: right;">Page 225</p> <p>1 information, correct? 2 A. My opinion is that it shouldn't be 3 missing, but beyond that, no. 4 MS. MILLER: Okay. The -- I lost track of 5 where I was going. Give me a second. Got off 6 on a sidetrack. 7 BY MS. MILLER: 8 Q. I'm going to go back to starting with 9 Dr. Weldon. 10 Would you agree with me that although 11 Dr. Weldon was disciplined, that does not 12 necessarily mean that he did not treat legitimate 13 patients with legitimate medical need? 14 MR. ELSNER: Objection. 15 THE WITNESS: I can't agree with that 16 statement. 17 BY MS. MILLER: 18 Q. So you do not agree that it's possible 19 that Dr. Weldon had patients with legitimate medical 20 needs? 21 MR. ELSNER: Objection. 22 THE WITNESS: I have no way to 23 substantiate that. I can only go by the 24 information that showed that Weldon was 25 disciplined regarding controlled substances,</p>

<p style="text-align: right;">Page 226</p> <p>1 and any controlled substance prescription that</p> <p>2 Weldon issued would have raised a red flag</p> <p>3 simply because of his past history and his</p> <p>4 prescribing patterns. And, therefore, those</p> <p>5 needed to be resolved.</p> <p>6 And whether they were legitimate or not,</p> <p>7 beyond that, I have no way to comment on that.</p> <p>8 BY MS. MILLER:</p> <p>9 Q. And your basis that that would have raised</p> <p>10 a red flag is based on an assumption that Albertsons</p> <p>11 would have had that information regarding those</p> <p>12 disciplinary actions, correct?</p> <p>13 A. That Albertsons should have had that</p> <p>14 information.</p> <p>15 Q. And if I were to ask that same question</p> <p>16 with respect to the other prescribers, that would be</p> <p>17 the same answer, correct?</p> <p>18 A. Yes.</p> <p>19 Q. I want to go to Page 4 of your report.</p> <p>20 The third bullet point down, you express</p> <p>21 an opinion that "Albertsons failed to adequately</p> <p>22 staff their pharmacies to meet requirements of the</p> <p>23 CSA and state law."</p> <p>24 What is that opinion based on?</p> <p>25 A. Both in the CSA and within Texas law, it</p>	<p style="text-align: right;">Page 228</p> <p>1 points, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. I have the same question. In this</p> <p>4 section where you've identified red flags that are</p> <p>5 commonly recognized in practice, would you agree</p> <p>6 with me that the language in these red flags are a</p> <p>7 little bit different than the language that you have</p> <p>8 presented in the red flags you provided to</p> <p>9 Dr. McCann in this case?</p> <p>10 A. The wording may be somewhat different, but</p> <p>11 it doesn't change the red flag and doesn't change</p> <p>12 what the red flag means.</p> <p>13 Q. Okay. And it's stating a general concept</p> <p>14 of a red flag.</p> <p>15 So taking the first one, "Patient is</p> <p>16 traveling long distances to their pharmacy or</p> <p>17 prescriber," correct?</p> <p>18 A. Correct.</p> <p>19 Q. All right. And you identify this as a</p> <p>20 commonly recognized flag in pharmacy practice,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Right. But you don't identify that that</p> <p>24 is -- what's commonly recognized is a limit of</p> <p>25 25 miles within this red flag, correct?</p>
<p style="text-align: right;">Page 227</p> <p>1 says that there should be adequate staffing to</p> <p>2 ensure that the requirements of the CSA are met and</p> <p>3 that the closed system remains a closed system.</p> <p>4 Q. Okay. What is the basis of your opinion</p> <p>5 that Albertsons failed to adequately staff its</p> <p>6 pharmacies?</p> <p>7 A. The basis for that are the hard data that</p> <p>8 showed how many prescriptions had red flags, how</p> <p>9 many prescriptions had multiple red flags, and how</p> <p>10 those prescriptions and the flags were not</p> <p>11 identified, resolved, or documented.</p> <p>12 Based upon that data, that's where I draw</p> <p>13 that conclusion. And, again, deposition of the</p> <p>14 pharmacists that were saying that they didn't have</p> <p>15 the staffing that they needed or that the staffing</p> <p>16 was being cut for budgetary purposes.</p> <p>17 Q. The data that you're -- we're referencing,</p> <p>18 how many prescriptions had red flags and how many</p> <p>19 had multiple red flags, you're referring to the red</p> <p>20 flag calculations that were provided by Dr. McCann,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. In this bullet point, you have identified</p> <p>24 red flags commonly recognized in pharmacy practice</p> <p>25 include, and you've outlined a list of bullet</p>	<p style="text-align: right;">Page 229</p> <p>1 MR. ELSNER: Objection.</p> <p>2 THE WITNESS: Correct, because this was</p> <p>3 simply a summary, and I knew that I was going</p> <p>4 to discuss that in greater detail later in the</p> <p>5 document.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. Is it your opinion that it is commonly</p> <p>8 recognized in pharmacy practice that patients</p> <p>9 traveling within 25 miles from center of ZIP code to</p> <p>10 center of ZIP code is a red flag?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Are you aware that Anna Lembke has</p> <p>13 been retained to offer expert opinions in this case?</p> <p>14 A. I'm sorry. Who?</p> <p>15 Q. Anna Lembke.</p> <p>16 A. No.</p> <p>17 Q. You have not -- you have not reviewed her</p> <p>18 expert report in this case, I take it?</p> <p>19 A. No. No, I have not.</p> <p>20 Q. Okay. Are you aware she has expressed</p> <p>21 opinions that various entities have collaborated</p> <p>22 with drug manufacturers such as Purdue by receiving</p> <p>23 money from them?</p> <p>24 A. I have no information on what she's</p> <p>25 saying.</p>

<p style="text-align: right;">Page 230</p> <p>1 Q. Okay. Do you agree with her opinion that 2 entities that receive money from pharmacies or 3 distributors of opioids can be -- I lost my word. 4 I'm tired. 5 Do you agree -- would you agree with an 6 opinion that entities that receive money from 7 industry groups, such as manufacturers or 8 distributors of opioids, could be considered 9 unreliable sources of information, based on the fact 10 that they've received money from those 11 organizations? 12 A. I cannot agree with a blanket statement 13 like that. And, in fact, it would even impugn 14 Albertsons who receives rebates from manufacturers 15 of opioids for the drugs they dispense. 16 So that's a statement that I do not agree 17 with at all. 18 Q. Okay. And, in fact, NABP received money 19 from manufacturers and distributors of opioids over 20 the years as well, correct? 21 MR. ELSNER: Objection. 22 THE WITNESS: They only received one 23 grant, and that grant then was given directly 24 to the states. 25 Any other funding from manufacturers is</p>	<p style="text-align: right;">Page 232</p> <p>1 information, as presented by NABP. 2 BY MS. MILLER: 3 Q. A couple questions regarding the drug 4 buprenorphine. 5 Am I correct in understanding that 6 buprenorphine is a drug that one of its uses is for 7 the treatment of opioid use disorder? 8 MR. ELSNER: Objection, scope, foundation. 9 THE WITNESS: I believe so, yes. 10 BY MS. MILLER: 11 Q. Would you agree that it's important for 12 patients who use buprenorphine for treatment of 13 opioid use disorder to adhere to their treatment 14 plan? 15 A. Yes. 16 Q. And it would be important for patients who 17 use buprenorphine to continue to fill their 18 prescriptions on a timely basis in order to adhere 19 to their treatment plan? 20 A. Yes. 21 MS. MILLER: Why don't we take a quick 22 five-minute break. I'm kind of wrapping up my 23 notes here. 24 THE VIDEOGRAPHER: Off the record at 2:16. 25</p>
<p style="text-align: right;">Page 231</p> <p>1 used for educational programming that's 2 overseen by the American Council on Pharmacy 3 Education, according to their guidelines. And 4 none of that money makes it into NABP or 5 influences NABP. 6 BY MS. MILLER: 7 Q. Okay. That's my question. 8 And, in fact, manufacturers and 9 distributors within the industry, as we have seen in 10 the documents today, worked with NABP and other 11 organizations in developing educational materials 12 for pharmacies and pharmacists, correct? 13 MR. ELSNER: Objection. 14 THE WITNESS: Yes. 15 BY MS. MILLER: 16 Q. Would I be correct in understanding that 17 you would not agree that the fact that manufacturers 18 and distributors participated in the development of 19 those educational tools renders them unreliable? 20 MR. ELSNER: Objection. 21 THE WITNESS: Because it was overseen and 22 managed by NABP, we wouldn't have allowed any 23 impropriety. So I would agree that under 24 NABP's control, the answer is no. 25 They should be -- they would be reliable</p>	<p style="text-align: right;">Page 233</p> <p>1 (Whereupon, a recess was taken 2 from 2:16 p.m. to 2:28 p.m.) 3 THE VIDEOGRAPHER: Back on the record at 4 2:28. 5 MS. MILLER: Okay. I have just a 6 few minutes left. I want to go back to a 7 question I forgot to ask on the red flags. 8 Do you have the list of red flags handy? 9 THE WITNESS: Is that Exhibit 6? 10 MS. MILLER: It wasn't 6. 11 MR. ELSNER: 13 maybe? 12 MS. MILLER: Or you could use your report 13 if you want. 14 MR. ELSNER: 11. 15 MS. MILLER: 11, thank you. 16 BY MS. MILLER: 17 Q. Okay. Specifically referring to Red Flag 18 Number 5, which is "Patient was dispensed an opioid, 19 benzo, and a muscle relaxer for overlapping days of 20 supply," and Red Flag 6, "Patient was dispensed an 21 opioid of benzo and a muscle relaxer on the same day 22 and all the prescriptions were written by the same 23 prescriber," would you agree with me that if a 24 prescription was triggered by either of these red 25 flags, 5 or 6, it would automatically be triggered</p>

<p style="text-align: right;">Page 234</p> <p>1 by Red Flag Number 7, which is "Patient was 2 dispensed an opioid and a benzo within 30 days of 3 one another"?</p> <p>4 A. I don't believe that's the way McCann 5 calculated that. I believe that he looked at the 6 red flags and how they applied and then tried to 7 avoid the deduplication. But I'm not sure how that 8 analysis was done.</p> <p>9 Q. Okay. Well, that's a different question. 10 So on my question, would you agree with me 11 that if a set of prescriptions triggered Red Flag 5 12 and Red Flag 6, they would automatically trigger Red 13 Flag 7 as well?</p> <p>14 A. No. In the context of when the final 15 assessment was done, if it was only an opioid and a 16 benzo in 5 and 6, that would trigger 7.</p> <p>17 If there were three prescriptions, like in 18 5 or 6, then depending upon the circumstances, it 19 would just trigger 5 or 6.</p> <p>20 Q. Okay. So if a patient was dispensed an 21 opioid, a benzo, and a muscle relaxer, is it your 22 testimony that it would not be -- it would not be 23 included in the red flag calculation Number 7, for 24 Number 7?</p> <p>25 A. If they were all on the same day? And</p>	<p style="text-align: right;">Page 236</p> <p>1 of each other, correct?</p> <p>2 It's just the addition of a muscle relaxer 3 on top of it?</p> <p>4 A. Yeah, I'm not -- I would have to look at 5 the data just to see how that was netted out.</p> <p>6 Q. So sitting here today, you don't know 7 whether Dr. McCann excluded calculations -- when he 8 was calculating what hit on multiple red flags, you 9 don't know whether he excluded prescriptions that 10 would have triggered 5, 6, and 7 all at the same 11 time?</p> <p>12 MR. ELSNER: Objection.</p> <p>13 THE WITNESS: Yeah, my understanding is 14 that if there are multiple red flags in a 15 prescription, that they would be noted and 16 triggered.</p> <p>17 Now, whether or not any red flags were 18 only counted once because they were -- touched 19 upon the others, that I'm not sure. But any 20 red flag that would be in those data would be 21 counted.</p> <p>22 So if there was a benzo and opioid, that 23 would count. If there was a benzo, opioid, and 24 a muscle relaxant, then that would be a red 25 flag as well.</p>
<p style="text-align: right;">Page 235</p> <p>1 you're talking 5 or 6?</p> <p>2 Q. Well, so 5 is for overlapping days of 3 supply; 6 is on the same day.</p> <p>4 A. Yeah. Again, I would -- I'm not sure how 5 Dr. McCann calculated that.</p> <p>6 Q. Okay, yeah. Well, that's a different 7 question.</p> <p>8 A. Yeah.</p> <p>9 Q. But based on the way these are written, 10 would you agree with me that if a patient was 11 dispensed an opioid, a benzo, and a muscle relaxer 12 on the same day, that set of prescriptions would 13 trigger Red Flag 5, Red Flag 6, and Red Flag 7?</p> <p>14 A. Yeah, I don't know how to respond.</p> <p>15 Q. Just by the way they're written, right?</p> <p>16 If someone had both an opioid and a benzo 17 that were prescribed on the same day or 18 overlapping days of supply, that would trigger Red 19 Flag 7, correct, because they're within 30 days of 20 each other?</p> <p>21 Do you agree with that?</p> <p>22 A. I guess, yes.</p> <p>23 Q. Okay. And so, therefore, if they were 24 prescribed an opioid, benzo, and a muscle relaxer, 25 that includes an opioid and a benzo within 30 days</p>	<p style="text-align: right;">Page 237</p> <p>1 BY MS. MILLER:</p> <p>2 Q. You've made reference to the number of red 3 flags or number of prescriptions in opioids 4 dispensing data that hit on multiple red flags.</p> <p>5 And you provided a percentage that was 6 given to you by Dr. McCann, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. But sitting here today, you don't 9 know whether Dr. McCann excluded prescriptions that 10 hit on Red Flag 5, 6, and 7 together to reference 11 that as multiple red flags?</p> <p>12 MR. ELSNER: Objection.</p> <p>13 THE WITNESS: I would say I think that 14 they did hit on those and included those, 15 thinking about it more now.</p> <p>16 BY MS. MILLER:</p> <p>17 Q. Okay. You would agree with me that the 18 underlying concept for a prescription with these red 19 flags is essentially the same. It's just with a 20 little bit different nuance to it, correct?</p> <p>21 A. No. I would say that each red flag poses 22 its own, an additional risk. So every time there's 23 another multiple -- another red flag that adds to 24 the multiple, you've increased the danger to the 25 patient and the possibility of diversion of that</p>



<p style="text-align: right;">Page 238</p> <p>1 prescription.</p> <p>2 Q. Okay. So if we were to take Red Flag</p> <p>3 Number 6 as an example, "Patient was dispensed an</p> <p>4 opioid, a benzodiazepine, and a muscle relaxer on</p> <p>5 the same day, and prescriptions were written by the</p> <p>6 same prescriber," it's your opinion that if this</p> <p>7 were the only circumstances of this prescription, it</p> <p>8 was these three prescriptions issued on the same day</p> <p>9 by the same prescriber, that that should count, in</p> <p>10 calculation, as multiple red flags, as opposed to</p> <p>11 one red flag?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. In your list of red flags as</p> <p>14 reflected in Exhibit 11, you do not identify the use</p> <p>15 of discount cards as a red flag in that list,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. In all the authorities and the examples of</p> <p>19 red flags that we've looked through today, would you</p> <p>20 agree that none of those examples identified the use</p> <p>21 of discount cards as a red flag?</p> <p>22 MR. ELSNER: Objection.</p> <p>23 THE WITNESS: I think some of those</p> <p>24 documents said "and other information." So</p> <p>25 discount cards would fall maybe in the "other</p>	<p style="text-align: right;">Page 240</p> <p>1 systems, any programs that they had with respect to</p> <p>2 due diligence related to controlled substances, when</p> <p>3 you offered that statement?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. What about the review of dispensing</p> <p>6 data and notes and the resolution of red flags?</p> <p>7 Did you have access to any dispensing data</p> <p>8 or notes, resolutions, or any of that type of data</p> <p>9 at the time that you made this statement?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. I'd like to have you pull out</p> <p>12 Exhibit 20. And this is the excerpt of the</p> <p>13 transcript that you were shown.</p> <p>14 I want to show you a part of the</p> <p>15 transcript that you were not shown.</p> <p>16 If you'd turn to Page 61 and Line 12, you</p> <p>17 were specifically asked a question:</p> <p>18 "Okay. But if you were to give an opinion</p> <p>19 against Albertsons, you would say that at least</p> <p>20 when it comes to systems, they're doing okay?"</p> <p>21 And your answer was:</p> <p>22 "I'd have to see what I was asked to</p> <p>23 review and what evidence was presented before I</p> <p>24 can make an opinion. And I don't want to</p> <p>25 present an opinion before looking at the</p>
<p style="text-align: right;">Page 239</p> <p>1 information."</p> <p>2 BY MS. MILLER:</p> <p>3 Q. Okay. But you didn't -- you didn't</p> <p>4 identify any red flags that specifically identified</p> <p>5 discount cards as a red flag?</p> <p>6 A. Correct.</p> <p>7 MS. MILLER: Okay. I think those are all</p> <p>8 the questions that I have for you.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. ELSNER: I just have a few follow-up</p> <p>11 questions.</p> <p>12 EXAMINATION</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. So, Mr. Catizone, you were asked a few</p> <p>15 questions about some prior testimony that you gave</p> <p>16 in the CT4 San Francisco litigation.</p> <p>17 Do you recall that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And it related to an answer to a</p> <p>20 question that you gave about Albertsons' systems.</p> <p>21 At the time that you gave that testimony,</p> <p>22 had you done any review or analysis of any of the</p> <p>23 policies and procedures at Albertsons?</p> <p>24 A. No.</p> <p>25 Q. Had you looked at their dispensing-related</p>	<p style="text-align: right;">Page 241</p> <p>1 information, sir."</p> <p>2 Was that the answer that you gave?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Do you stand by that answer today?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Since you gave this testimony in 2022,</p> <p>7 have you now had the opportunity to review</p> <p>8 Albertsons' systems as well as their policy and</p> <p>9 procedures and their dispensing data related to</p> <p>10 controlled substances in Tarrant County?</p> <p>11 A. The policies, procedures, dispensing data,</p> <p>12 and whatever systems were referenced in the</p> <p>13 documents, but not the actual systems that</p> <p>14 pharmacists would see or interact with.</p> <p>15 Q. Okay. And so the opinions that you're</p> <p>16 offering today, are those based on your review of</p> <p>17 Albertsons' systems that you didn't have the chance</p> <p>18 to review at the time that you made this statement</p> <p>19 in 2022?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I want to turn now a little bit to</p> <p>22 some of the questions about the red flags because I</p> <p>23 got confused in some of the vernacular.</p> <p>24 And you can -- maybe it's easiest just to</p> <p>25 pull out your report, which is Exhibit 1. And if</p>

<p style="text-align: right;">Page 242</p> <p>1 we'd turn to those flags, maybe we start with 2 distance. 3 If you look at Page -- let's start with 4 35. So you describe the flags of distance related 5 to pharmacy distance and prescriber distance as 6 being traveling more than 25 miles. 7 Is that the flag that you described? 8 A. Yes, sir. 9 Q. Is that flag discretionary in the sense 10 that one pharmacist could think it's 23 miles and 11 another pharmacist think it's 100 miles, in your 12 opinion? 13 A. No. 14 Q. And when it comes to a prescription which 15 is presented for 25 miles or more, what is your 16 expectation of what the pharmacist should do when 17 presented with a prescription like that? 18 A. The best way I can explain it is to give a 19 clinical example, and why that there's not a 20 discretion whether or not a pharmacist disagrees 21 with that. 22 If I have a prescription that's written 23 for a child and that prescription is an adult dose 24 that I know would harm or kill that child, I have no 25 discretion to say "I disagree with pharmacists who</p>	<p style="text-align: right;">Page 244</p> <p>1 investigated; is that fair? 2 A. Yes, sir. 3 Q. Okay. So it could be that the 4 prescription is evidence of actual diversion, or it 5 could be that the prescription could be resolved? 6 A. Yes, sir. 7 Q. Okay. And if a prescription is resolved 8 and then filled, what is your expectation of what 9 the pharmacist should do before filling that 10 prescription? 11 A. There should be clear documentation of 12 what the red flag was, how the pharmacist resolved 13 it, and any other additional notes the pharmacist 14 thinks is important. 15 Q. Okay. And that documentation requirement, 16 is that a pharmacy practice standard? 17 A. It's referenced in state and federal law 18 that says there must be appropriate recordkeeping 19 for any controlled substance that's distributed and 20 dispensed. And it's a standard of care in terms of 21 the documentation of what's happened with the 22 patient and that patient's care. 23 Q. And does the DEA give guidance like that 24 on documentation? 25 A. They mention that it's a requirement, and</p>
<p style="text-align: right;">Page 243</p> <p>1 won't fill this prescription," and fill that 2 prescription. 3 That same vigilance and due diligence has 4 to be attached to a controlled substance 5 prescription. 6 So when the pharmacist sees a 25-mile 7 trigger, the pharmacist has to stop and investigate 8 that prescription. 9 There's no discretion to say, "I think it 10 should be 100. I think it should be 50." 11 Based upon the information I've seen, the 12 evidence experience, 25 miles is that indicator that 13 draws the pharmacist, just like a dose that could 14 cause harm to a child. And it should be 15 investigated and analyzed. 16 Q. Okay. And should the analysis of how that 17 prescription is resolved be documented? 18 A. Yes. 19 Q. Okay. And you're not suggesting that 20 every prescription that -- for which a patient had 21 to travel 25 miles to a pharmacy is automatically a 22 diverted prescription, right? 23 A. Correct. 24 Q. Okay. You're saying that it could be 25 diverted. It's simply a red flag that needs to be</p>	<p style="text-align: right;">Page 245</p> <p>1 then it's deferred to the standards of care. And 2 the state practice acts is to actually define what 3 that might be. 4 Q. Do you know whether Albertsons has a 5 policy for its employees as to whether or not they 6 should document a prescription that presents a red 7 flag? 8 A. In the documents I reviewed, one of the 9 tenets of Albertsons' policies was document, 10 document, document. In fact, one particular 11 reference said that, "Document, document, document." 12 There was no equivocation about whether or 13 not documentation should happen or whether it was 14 important or a policy. 15 Q. And what about in reviewing a state 16 prescription monitoring program? 17 Is there a policy and procedure at 18 Albertsons that when a pharmacist reviews those 19 programs, that they should document the results of 20 that review? 21 A. Yes, the policy said that once an issue is 22 identified and resolved with the PMP, it should be 23 documented in the patient's profile or record. 24 Q. And when a pharmacy, like Albertsons, has 25 a policy and procedure regarding documentation or</p>

<p style="text-align: right;">Page 246</p> <p>1 any of the red flags, does that itself reflect a 2 standard of care?</p> <p>3 A. I believe it reflects a standard of care 4 and, to a certain extent, a mandate.</p> <p>5 If the policy at the pharmacy is you can't 6 steal or you can't use controlled substances for 7 personal use. And I say "I'm not going to adhere to 8 that policy," I'm probably terminated, fired, or 9 arrested.</p> <p>10 So I would imagine if it's a policy, 11 there's a mandate or a requirement and a standard 12 that Albertsons or others are holding their 13 employees to.</p> <p>14 Q. And, in fact, the Albertsons policy with 15 respect to distance is actually shorter than 16 25 miles, correct?</p> <p>17 MS. MILLER: Object to form.</p> <p>18 THE WITNESS: Correct.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. What is the -- do you recall what 21 Albertsons' policy is with respect to distance?</p> <p>22 A. 15 to 20 miles.</p> <p>23 Q. Okay. And that's actually less than -- 24 stricter than the red flag that you've -- that's 25 reflected in the DEA policies and procedures in</p>	<p style="text-align: right;">Page 248</p> <p>1 were being exchanged between you and the 2 Cardinal Health official in 2014.</p> <p>3 And just on the page that says Draft 4 Number 2, Pharmacist Red Flags, under Number 5, it 5 says, "Large percentage of controlled substance 6 prescriptions are paid for in cash or the patient 7 uses insurance."</p> <p>8 Is that right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. And I want to show you one that you 11 weren't shown, which is on the very last page. And 12 this is the -- if we move three pages before it, 13 Prescription Drug Trafficking and Abuse Trends, 14 Pharmacy Diversion Awareness Conference in 15 Louisville, Kentucky, on November 16th and 17th, 16 2013, a presentation by Alan Santos.</p> <p>17 Are you with me?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. On the very last page, it describes 20 a red flag of cash.</p> <p>21 How is it described in the last page?</p> <p>22 A. "Many customers paying cash for their 23 prescriptions."</p> <p>24 Q. Okay. And so -- and did Albertsons have a 25 policy with respect to cash --</p>
<p style="text-align: right;">Page 247</p> <p>1 cases and also reflected in your opinions here, 2 true?</p> <p>3 A. True.</p> <p>4 Q. Okay. But you still ran your analysis 5 based on 25 miles, not the stricter Albertsons 6 policy?</p> <p>7 A. Correct. Dr. McCann was asked to run the 8 data.</p> <p>9 Q. Okay. And you instructed him in how to 10 run that --</p> <p>11 A. Correct.</p> <p>12 Q. -- is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. What about with respect to cash?</p> <p>15 I know that there was a question about 16 whether the documentation has to reflect cash with 17 insurance.</p> <p>18 If a patient pays cash for a controlled 19 substance prescription, is that a red flag, in your 20 opinion?</p> <p>21 A. Yes.</p> <p>22 Q. Always?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. I want to have you take a look at 25 Exhibit 6. And I -- and this is the red flags that</p>	<p style="text-align: right;">Page 249</p> <p>1 A. Yes, sir.</p> <p>2 Q. -- as to whether that was a red flag?</p> <p>3 A. Yes.</p> <p>4 Q. And what was the Albertsons position?</p> <p>5 A. I believe it was cash or paying for -- 6 using cash when they have insurance.</p> <p>7 Q. Okay. Let's make sure we've got it 8 exactly right.</p> <p>9 If you look on Page 51.</p> <p>10 A. It says, "Cash prescriptions or patient 11 that asks to pay cash rather than use insurance 12 card."</p> <p>13 Q. Okay. So even Albertsons' policy, is it 14 true that cash was a red flag?</p> <p>15 A. Yes.</p> <p>16 Q. And your expectation with the red flag of 17 cash would have been what?</p> <p>18 A. Again, the prescription process should be 19 halted, and the pharmacist analyze the reason and 20 rationale for the patient using cash, when 90-some 21 percent of patients have insurance to cover their 22 prescription medications.</p> <p>23 Q. And you were asked a series of questions 24 about some of the flags which require the collection 25 of multiple prescriptions.</p>

<p style="text-align: right;">Page 250</p> <p>1 Do you know what I'm referring to?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And so if we look at a couple of</p> <p>4 examples of those, I think under "Doctor Shopping"</p> <p>5 is an example, as "A patient dispensed an opioid</p> <p>6 prescription with overlapping days' supply written</p> <p>7 by two or more prescribers," is one example.</p> <p>8 Is that a red flag?</p> <p>9 A. Yes.</p> <p>10 Q. Also, "Pharmacy Shopping. A patient was</p> <p>11 dispensed opioid prescriptions with overlapping days</p> <p>12 of supply at two or more pharmacies."</p> <p>13 Is that right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Why is it a red flag for a patient</p> <p>16 to go to multiple doctors and get the same</p> <p>17 prescription, or to go to multiple pharmacies to</p> <p>18 fill opioid prescriptions?</p> <p>19 A. Because it's an individual that's trying</p> <p>20 to circumvent the system and obtain a supply of</p> <p>21 controlled substances and breach the closed</p> <p>22 distribution system. And it increases the</p> <p>23 possibility that those medication could be diverted</p> <p>24 and sold on the street or misused by the patient.</p> <p>25 Q. Okay. So when you encounter a patient</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. Okay. And what is your expectation of</p> <p>2 what the pharmacist should do when they encounter</p> <p>3 that second prescription, and it's clear to them</p> <p>4 that this patient has gone to multiple doctors to</p> <p>5 obtain that prescription, obtain the same opioid</p> <p>6 prescription?</p> <p>7 A. Those prescriptions should be documented</p> <p>8 in the records saying that this prescription was</p> <p>9 filled and subsequently the patient had -- this</p> <p>10 prescription was filled, this is the red flag that</p> <p>11 those prescriptions constitute, and here is how I</p> <p>12 resolved those red flags, and here's the</p> <p>13 recommendation or here are the next steps on what we</p> <p>14 need to do with that patient.</p> <p>15 Q. Okay. And does this same type of analysis</p> <p>16 apply to the other prescriptions in your red flags</p> <p>17 that require multiple prescriptions?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And the last thing I wanted to ask</p> <p>20 about, you were asked some questions about some of</p> <p>21 the disciplined prescribers who had scripts filled</p> <p>22 at Albertsons.</p> <p>23 You were asked about whether you had done</p> <p>24 some kind of statistical analysis about whether --</p> <p>25 the number of prescriptions they wrote and how that</p>
<p style="text-align: right;">Page 251</p> <p>1 where you see in the second prescription that, oh,</p> <p>2 boy, this same patient has seen two or more doctors</p> <p>3 to get an opioid prescription, and it triggers that</p> <p>4 red flag that they might be engaged in diversion; is</p> <p>5 that right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Are both of those prescriptions</p> <p>8 evidence of that potential diversion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And so did you intend for</p> <p>11 Dr. McCann to count both of those prescriptions?</p> <p>12 A. Yes.</p> <p>13 Q. Why?</p> <p>14 A. Even though the pharmacist may have not</p> <p>15 recognized that first prescription was a red flag or</p> <p>16 may not be a legitimate prescription, the</p> <p>17 retroactive analysis and the analysis that's done</p> <p>18 before any other prescriptions are filled indicate</p> <p>19 that that first prescription is critical to making</p> <p>20 that determination.</p> <p>21 And once it was determined that there was</p> <p>22 a red flag that was caused, or part of that first</p> <p>23 prescription, it has to be counted as a red flag</p> <p>24 because it's not a legitimate prescription, or it's</p> <p>25 not free of red flags from that point forward.</p>	<p style="text-align: right;">Page 253</p> <p>1 compared to all the prescriptions filled by</p> <p>2 Albertsons in Tarrant County.</p> <p>3 Do you remember that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So with respect, let's just say, with</p> <p>6 Dr. Weldon --</p> <p>7 A. What page?</p> <p>8 Q. Let me find it.</p> <p>9 So if we look at Page 80, in the second</p> <p>10 paragraph under Dr. Skie, Albertsons pharmacies in</p> <p>11 the county filled over 1,500 prescriptions written</p> <p>12 by Dr. Skie, and over 1,000 of them were for</p> <p>13 opioids.</p> <p>14 So just with respect to him and all of the</p> <p>15 other prescribers that you describe here, do</p> <p>16 prescriptions that Albertsons dispensed in</p> <p>17 Tarrant County for these disciplined doctors pose a</p> <p>18 risk to the public?</p> <p>19 A. Yes.</p> <p>20 MS. MILLER: Object to form.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Do the prescriptions that Albertsons</p> <p>23 dispensed in Tarrant County from these disciplined</p> <p>24 prescribers, could they contribute to diversion?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 254</p> <p>1 MS. MILLER: Object to form.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. And could these same prescriptions written</p> <p>4 by these disciplined prescribers and dispensed at</p> <p>5 Albertsons over time, could they contribute to the</p> <p>6 public nuisance in Tarrant County?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. And is that true even if there's only</p> <p>11 1,500 of those prescriptions?</p> <p>12 A. Yes.</p> <p>13 Q. What if there were 1,000 of those</p> <p>14 prescriptions?</p> <p>15 A. Any prescription that's outside of the</p> <p>16 system, that there's evidence that it's not</p> <p>17 legitimate and it's not been dispensed</p> <p>18 appropriately, contributes to all of the factors</p> <p>19 that you said; diversion, public nuisance, and harm</p> <p>20 to the public.</p> <p>21 MR. ELSNER: All right. Thank you,</p> <p>22 Mr. Catizone. Those are my questions.</p> <p>23 FURTHER EXAMINATION</p> <p>24 BY MS. MILLER:</p> <p>25 Q. Am I correct in understanding that with</p>	<p style="text-align: right;">Page 256</p> <p>1 BY MS. MILLER:</p> <p>2 Q. This is an excerpt which identifies -- or</p> <p>3 which lists the red flags.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Okay. Do you see any reference to a</p> <p>7 geographic distance for any of these red flags?</p> <p>8 A. Yes.</p> <p>9 Q. Where?</p> <p>10 A. The one that says, "The prescriber's</p> <p>11 practice is out of state."</p> <p>12 Q. Okay. Out of state. But that doesn't</p> <p>13 identify a certain number of miles, correct?</p> <p>14 A. No.</p> <p>15 (Exhibit 23 was marked for</p> <p>16 identification.)</p> <p>17 MS. MILLER: Okay. I'm going to hand you</p> <p>18 what I've marked as Exhibit Number 23, which is</p> <p>19 Albertsons' 2018 policy. I will direct you to</p> <p>20 Page 69 and the bottom reference to that.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. This is Exhibit 23.</p> <p>23 On Page 69 of this policy is a list of</p> <p>24 identifying red flags, correct, 69 onto Page 70?</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 255</p> <p>1 respect to the prescriptions written by those</p> <p>2 prescribers that you've identified, you don't have</p> <p>3 any evidence that any of those specific</p> <p>4 prescriptions were diverted, correct?</p> <p>5 A. No, I do not.</p> <p>6 Q. With respect to your discussion about the</p> <p>7 multiple prescriptions that trigger a red flag, am I</p> <p>8 correct in understanding that you were not</p> <p>9 expressing an opinion that it was inappropriate for</p> <p>10 the pharmacist to fill the first of those</p> <p>11 prescriptions?</p> <p>12 A. Absent any other circumstances or red</p> <p>13 flags, I can't say that that was inappropriate.</p> <p>14 Q. Okay. You were asked some questions about</p> <p>15 Albertsons' policies, and I want to be very clear</p> <p>16 here because your report very distinctly</p> <p>17 distinguishes between policies and training</p> <p>18 materials.</p> <p>19 And given that distinction in your report,</p> <p>20 I want to go through it.</p> <p>21 (Exhibit 22 was marked for</p> <p>22 identification.)</p> <p>23 MS. MILLER: So this is a copy I've marked</p> <p>24 as Exhibit 22 of Albertsons' 2016 policy.</p> <p>25</p>	<p style="text-align: right;">Page 257</p> <p>1 Yes.</p> <p>2 Q. So other than that same reference that the</p> <p>3 prescriber's practice is out of state, would you</p> <p>4 agree with me that none of these red flags</p> <p>5 identifies a geographic distance?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. I'm going to refer you back to</p> <p>8 Exhibit 19 in your stack of documents. 19. This is</p> <p>9 the PowerPoint presentation.</p> <p>10 A. I'm just -- sorry, I'm trying to process</p> <p>11 this, where the distance isn't there. And then</p> <p>12 later it says there's a policy requiring that all</p> <p>13 pharmacists must register or use a drug monitoring</p> <p>14 program. So I'm trying to put that in the scope of</p> <p>15 your question.</p> <p>16 But I'm sorry, go ahead.</p> <p>17 Q. Okay. My question's right now focused on</p> <p>18 geographic distance.</p> <p>19 A. Okay.</p> <p>20 Q. So I've just referred to you the policies</p> <p>21 on which you have opined, Albertsons' policies on</p> <p>22 which you've opined in your report.</p> <p>23 Exhibit 19 is the PowerPoint presentation</p> <p>24 that we discussed earlier, and this is what you cite</p> <p>25 to on Page 36 of your report.</p>



Page 258

1 You reference that Albertsons lists  
 2 "Patients and prescribers are 15 to 20 miles apart.  
 3 Prescriber and pharmacy are over 60 miles apart."  
 4 Do you see that in your report?  
 5 A. Yes.  
 6 Q. Okay. I'll ask you to turn to Page 15 of  
 7 the PowerPoint presentation.  
 8 Okay. So this is the page that you've  
 9 cited to.  
 10 Do you see what's at the top of the  
 11 document, what the very top says?  
 12 A. "Triangle."  
 13 Q. Okay. Do you have any understanding as to  
 14 what was presented in this PowerPoint presentation  
 15 when it's referred to as a "triangle"?  
 16 A. I do not.  
 17 Q. Okay. So you are -- when you reference  
 18 that there's basis for patient and prescriber being  
 19 15 to 20 miles apart, would you agree with me that  
 20 you've made the assumption that this is a red flag,  
 21 in and of itself, as opposed to being combined with  
 22 the second bullet point, which is prescriber and  
 23 pharmacy are over 60 miles apart?  
 24 A. Again, as you've said, without having that  
 25 presentation or being able to hear what they say, I

Page 259

1 can't agree with that statement or not.  
 2 Q. Okay. You don't know one way or the  
 3 other, right?  
 4 A. Correct.  
 5 Q. When a pharmacist is presented with a  
 6 prescription, how does a pharmacist know that the  
 7 prescription or that patient is -- lives 25 miles  
 8 away from the pharmacy if it's calculated center of  
 9 ZIP code to center of ZIP code?  
 10 What's your expectation of how a  
 11 pharmacist would calculate that?  
 12 MR. ELSNER: Objection. Unless you're  
 13 going to produce us the underlying data with  
 14 your patients' addresses, I think it's unfair  
 15 to challenge how this flag is done when we  
 16 don't have the addresses.  
 17 If you want to produce them to us, we will  
 18 run the flags on their actual addresses.  
 19 BY MS. MILLER:  
 20 Q. They have -- you have listed a percentage  
 21 of prescriptions that you're saying are red-flagged.  
 22 I'm asking, how is -- how is a pharmacy  
 23 supposed to adhere to that red flag that you've  
 24 presented?  
 25 A. I can respond as a pharmacist.


Page 260

1 One of the requirements of standards of  
 2 care is that the pharmacist has a good knowledge of  
 3 the surrounding areas and community of their  
 4 pharmacy and the patients. So when they receive the  
 5 prescription that would be outside of that  
 6 familiarity, it would trigger the pharmacist to  
 7 check that.  
 8 So if I'm working on North Michigan Avenue  
 9 and I get a prescription for 56th and Laflin on the  
 10 South Side of Chicago, I know that's not within my  
 11 patient population, and I would do some research.  
 12 Now, some of those addresses, I'm going to  
 13 know that's more than 25 miles away from downtown  
 14 and it's going to cause it.  
 15 Others that I may not be familiar with, I  
 16 would look up and say, "Let's look at the ZIP code,  
 17 let's look at the address and see how far away that  
 18 is." And then ask the patient, "Why are you coming  
 19 to this pharmacy," or resolve the red flag by  
 20 establishing that that's a legitimate distance for  
 21 the patient to travel to your pharmacy.  
 22 That's how a pharmacist would do it.  
 23 Q. Okay. So when we're looking at Red Flag  
 24 Numbers 1 and 2 that are measured by center of ZIP  
 25 code to center of ZIP code, would you agree with me

Page 261

1 that that calculation could be overinclusive, in  
 2 that it would include some patients that are less  
 3 than 25 miles away from the pharmacy itself?  
 4 A. I think, again, we're talking  
 5 conceptually. That red flag would say stop and  
 6 resolve it. And if it's outside or inside, that  
 7 documentation would establish that.  
 8 Q. Okay. In the example that we discussed  
 9 earlier this morning, you have a pharmacy that's on  
 10 the edge line of a ZIP code and a patient who is on  
 11 the edge of the neighboring ZIP code, but they're  
 12 only a couple miles apart, would you agree with me  
 13 that that pharmacist is not likely to recognize that  
 14 distance as a red flag under the 25-mile limit, as  
 15 you've stated it?  
 16 MR. ELSNER: Objection.  
 17 THE WITNESS: I can't agree with that, for  
 18 two reasons.  
 19 One, again, if it was familiar to their  
 20 facility, yes. If I look at the new policy  
 21 that you showed me for Albertsons and if it's  
 22 out of state, so if I'm right on the  
 23 Illinois-Indiana border and I'm only two miles  
 24 away from Indiana, Albertsons is saying that  
 25 that's a red flag, and I have to stop and fill

<p style="text-align: right;">Page 262</p> <p>1 that. Even though that may be familiar to the</p> <p>2 pharmacist and under the 25 miles, that would</p> <p>3 trigger a red flag.</p> <p>4 So I think each circumstance, the red flag</p> <p>5 automatically stops, and then the pharmacist</p> <p>6 has to use all the information available to</p> <p>7 decide and then document that red flag.</p> <p>8 BY MS. MILLER:</p> <p>9 Q. Would you agree with me that the</p> <p>10 circumstances are different based on where the</p> <p>11 pharmacy is located and the pharmacy's knowledge of</p> <p>12 the surrounding area, correct?</p> <p>13 MR. ELSNER: Objection.</p> <p>14 THE WITNESS: The circumstances are</p> <p>15 different, but the flag remains the same.</p> <p>16 BY MS. MILLER:</p> <p>17 Q. So if you have two ZIP codes within the</p> <p>18 same state and the pharmacy is in one ZIP code, the</p> <p>19 patient is in another ZIP code, but they're two</p> <p>20 miles apart, is it your testimony that the</p> <p>21 pharmacist should consider that a red flag because</p> <p>22 it's 25 miles between center of ZIP code to center</p> <p>23 of ZIP code?</p> <p>24 A. No, I think we're confounding the red</p> <p>25 flag.</p>	<p style="text-align: right;">Page 264</p> <p>1 was a point that you wanted to make about</p> <p>2 registering for the Prescription Drug Monitoring</p> <p>3 Program.</p> <p>4 A. I was just confused about the question</p> <p>5 about what's a policy at Albertsons, what's not a</p> <p>6 policy, and how some documents say that you don't</p> <p>7 have to register for the PMP, and now this document</p> <p>8 says, and some say 15 and 20.</p> <p>9 I regarded that information, anything that</p> <p>10 was presented by Albertsons to their employees, as</p> <p>11 something that Albertsons wanted followed, whether</p> <p>12 it was policy or guidance.</p> <p>13 And that was the point I was confused on,</p> <p>14 is that distinction that was being made.</p> <p>15 Q. In your opinion, as an expert in this</p> <p>16 field, is it important that there be consistent and</p> <p>17 clear direction provided to pharmacists as to the</p> <p>18 training and the appropriate flags to examine?</p> <p>19 A. Yes.</p> <p>20 Q. And have you seen that in Albertsons'</p> <p>21 policies?</p> <p>22 A. No.</p> <p>23 MR. ELSNER: No other questions. Thank</p> <p>24 you.</p> <p>25 MS. MILLER: Nothing further.</p>
<p style="text-align: right;">Page 263</p> <p>1 The red flag is, if the pharmacist can</p> <p>2 determine or senses that the patient is 25 miles</p> <p>3 away. If there are two ZIP codes that are two miles</p> <p>4 apart and I'm working in that pharmacy, I know where</p> <p>5 that adjoined, and I know that's two miles away.</p> <p>6 Therefore, I'm not going to measure that regardless</p> <p>7 if it's two ZIP codes, three ZIP codes away.</p> <p>8 I think the ZIP codes that McCann used</p> <p>9 were simply to establish some uniformity, instead of</p> <p>10 going address by address. Because patients'</p> <p>11 addresses were not available to -- in the dataset,</p> <p>12 and there would be no other way to calculate that by</p> <p>13 McCann unless he had all that information, which</p> <p>14 wasn't made available.</p> <p>15 Q. Okay. What he could have calculated was</p> <p>16 whether a patient was out of state from a pharmacy,</p> <p>17 though, correct?</p> <p>18 A. By ZIP codes, yes.</p> <p>19 Q. Or just a different state, correct?</p> <p>20 A. Yes.</p> <p>21 MS. MILLER: Okay. Those are all the</p> <p>22 questions I have.</p> <p>23 FURTHER EXAMINATION</p> <p>24 BY MR. ELSNER:</p> <p>25 Q. Just it sounded like, Mr. Catizone, there</p>	<p style="text-align: right;">Page 265</p> <p>1 THE WITNESS: Thank you.</p> <p>2 THE VIDEOGRAPHER: Off the record at 3:04.</p> <p>3 (Whereupon, the deposition was</p> <p>4 concluded at 3:04 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 266</p> <p>1           C E R T I F I C A T E</p> <p>2           The within and foregoing deposition of the</p> <p>3 witness, CARMEN CATIZONE, MS, RPh, DPh, was taken</p> <p>4 before GREG S. WEILAND, CSR, RMR, CRR, at</p> <p>5 Suite 3100, 77 West Wacker Drive, in the City of</p> <p>6 Chicago, Cook County, Illinois, commencing at 8:35</p> <p>7 a.m., on the 23rd day of May, 2024.</p> <p>8           The said witness was first duly sworn and</p> <p>9 was then examined upon oral interrogatories; the</p> <p>10 questions and answers were taken down in shorthand</p> <p>11 by the undersigned, acting as stenographer; and the</p> <p>12 within and foregoing is a true, accurate and</p> <p>13 complete record of all the questions asked of and</p> <p>14 answers made by the aforementioned witness at the</p> <p>15 time and place hereinabove referred to.</p> <p>16           The signature of the witness was not</p> <p>17 waived and the deposition was submitted to the</p> <p>18 deponent as per copy of the attached letter.</p> <p>19           The undersigned is not interested in the</p> <p>20 within case, nor of kin or counsel to any of the</p> <p>21 parties.</p> <p>22           Witness my signature on this 28th day of</p> <p>23 May, 2024.</p> <p>24 </p> <p>25 GREG S. WEILAND, CSR, RMR, CRR   License No. 084-003472</p>	<p style="text-align: right;">Page 268</p> <p>1           DEPOSITION REVIEW</p> <p>2           CERTIFICATION OF WITNESS</p> <p>3           ASSIGNMENT REFERENCE NO: 6693104</p> <p>4           CASE NAME: National Prescription Opiate Litigation - Track 8</p> <p>5           (Cobb County) v.</p> <p>6           DATE OF DEPOSITION: 5/23/2024</p> <p>7           WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh</p> <p>8           In accordance with the Rules of Civil</p> <p>9           Procedure, I have read the entire transcript of</p> <p>10           my testimony or it has been read to me.</p> <p>11           I have made no changes to the testimony</p> <p>12           as transcribed by the court reporter.</p> <p>13           Date           Carmen A. Catizone, MS, RPh, DPh</p> <p>14           Sworn to and subscribed before me, a</p> <p>15           Notary Public in and for the State and County,</p> <p>16           the referenced witness did personally appear</p> <p>17           and acknowledge that:</p> <p>18           They have read the transcript;</p> <p>19           They signed the foregoing Sworn</p> <p>20           Statement; and</p> <p>21           Their execution of this Statement is of</p> <p>22           their free act and deed.</p> <p>23           I have affixed my name and official seal</p> <p>24           this _____ day of _____, 20____.</p> <p>25           Notary Public</p> <p>                Commission Expiration Date</p>
<p style="text-align: right;">Page 267</p> <p>1           Veritext Legal Solutions</p> <p>2           1100 Superior Ave</p> <p>3           Suite 1820</p> <p>4           Cleveland, Ohio 44114</p> <p>5           Phone: 216-523-1313</p> <p>6           May 28, 2024</p> <p>7           To: MICHAEL E. ELSNER</p> <p>8           Case Name: National Prescription Opiate Litigation - Track 8 (Cobb</p> <p>9           County) v.</p> <p>10           Veritext Reference Number: 6693104</p> <p>11           Carmen A. Catizone, MS, RPh, DPh   Deposition Date: 5/23/2024</p> <p>12           Dear Sir/Madam:</p> <p>13           Enclosed please find a deposition transcript. Please have the witness</p> <p>14           review the transcript and note any changes or corrections on the</p> <p>15           included errata sheet, indicating the page, line number, change, and</p> <p>16           the reason for the change. Have the witness' signature notarized and</p> <p>17           forward the completed page(s) back to us at the Production address</p> <p>18           shown</p> <p>19           above, or email to production-midwest@veritext.com.</p> <p>20           If the errata is not returned within thirty days of your receipt of</p> <p>21           this letter, the reading and signing will be deemed waived.</p> <p>22           Sincerely,</p> <p>23           Production Department</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 269</p> <p>1           DEPOSITION REVIEW</p> <p>2           CERTIFICATION OF WITNESS</p> <p>3           ASSIGNMENT REFERENCE NO: 6693104</p> <p>4           CASE NAME: National Prescription Opiate Litigation - Track 8</p> <p>5           (Cobb County) v.</p> <p>6           DATE OF DEPOSITION: 5/23/2024</p> <p>7           WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh</p> <p>8           In accordance with the Rules of Civil</p> <p>9           Procedure, I have read the entire transcript of</p> <p>10           my testimony or it has been read to me.</p> <p>11           I have listed my changes on the attached</p> <p>12           Errata Sheet, listing page and line numbers as</p> <p>13           well as the reason(s) for the change(s).</p> <p>14           I request that these changes be entered</p> <p>15           as part of the record of my testimony.</p> <p>16           I have executed the Errata Sheet, as well</p> <p>17           as this Certificate, and request and authorize</p> <p>18           that both be appended to the transcript of my</p> <p>19           testimony and be incorporated therein.</p> <p>20           Date           Carmen A. Catizone, MS, RPh, DPh</p> <p>21           Sworn to and subscribed before me, a</p> <p>22           Notary Public in and for the State and County,</p> <p>23           the referenced witness did personally appear</p> <p>24           and acknowledge that:</p> <p>25           They have read the transcript;</p> <p>                They have listed all of their corrections</p> <p>                in the appended Errata Sheet;</p> <p>                They signed the foregoing Sworn</p> <p>                Statement; and</p> <p>                Their execution of this Statement is of</p> <p>                their free act and deed.</p> <p>                I have affixed my name and official seal</p> <p>                this _____ day of _____, 20____.</p> <p>                Notary Public</p> <p>                Commission Expiration Date</p>

<div>Page 270</div> <div>1           ERRATA SHEET</div> <div>2           VERITEXT LEGAL SOLUTIONS MIDWEST</div> <div>3           ASSIGNMENT NO: 6693104</div> <div>3 PAGE/LINE(S) /       CHANGE       /REASON</div> <div>4 _____</div> <div>5 _____</div> <div>6 _____</div> <div>7 _____</div> <div>8 _____</div> <div>9 _____</div> <div>10 _____</div> <div>11 _____</div> <div>12 _____</div> <div>13 _____</div> <div>14 _____</div> <div>15 _____</div> <div>16 _____</div> <div>17 _____</div> <div>18 _____</div> <div>19 _____</div> <div>20 Date           Carmen A. Catizone, MS, RPh, DPh</div> <div>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</div> <div>22 DAY OF _____, 20____.</div> <div>23 _____</div> <div>24           Notary Public</div> <div>25           _____</div> <div>              Commission Expiration Date</div>	